

AGREEMENT FOR PROFESSIONAL SERVICES

FOR CONTRACTTITLE

CONTRACT NO. E@@@@@E@@

BETWEEN

KING COUNTY

AND

LEGALNAME

EXECUTED COUNTERPARTS
COUNTERPART NO. _____ OF 4

KING COUNTY STANDARD CONSULTANT AGREEMENT

Firm Name and Address:	Agreement Number:
Federal Employer Identification Number:	Unified Business Identifier (UBI) Number:
Completion Date:	Execution Date:
Federal Aid Number:	1099 Form Required:
Project Title and Description of Work:	
DBE Participation Yes No MBE Participation Yes No WBE Participation Yes No	Total Amount Authorized Management Reserve Fund Maximum Amount Payable
Agreement Type: Cost Plus Fixed Fee	Actual Cost Overhead Rate: Fixed Overhead Rate: N/A
Fixed Fee Rate:	

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THIS AGREEMENT, made and entered into this _____ day of _____, _____ between the County of King, Washington, hereinafter called the "COUNTY", and the above organization, hereinafter called the "CONSULTANT."

WITNESSETH THAT:

WHEREAS, the COUNTY desires to accomplish the above referenced PROJECT; and

WHEREAS, the COUNTY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that it complies with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the COUNTY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. GENERAL DESCRIPTION OF WORK

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II. SCOPE OF WORK

The Scope of Work and projected level of effort for this PROJECT is detailed in Exhibit "A" attached hereto, and by this reference made a part of this AGREEMENT.

III. GENERAL REQUIREMENTS

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the COUNTY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the COUNTY. The CONSULTANT shall attend coordination, progress and presentation meetings with the COUNTY and/or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the COUNTY. The COUNTY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the COUNTY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the COUNTY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, for 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this agreement. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful function (CUF) regulation outlined in the COUNTY'S "DBE Program Participation Plan." The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the COUNTY.

All reports, PS&E materials, and other data, furnished to the CONSULTANT by the COUNTY shall be returned. All electronic files prepared by the CONSULTANT must meet the requirements, if any, outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the COUNTY. Reuse by the COUNTY or by others, acting through or on behalf of the COUNTY, of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

Exhibit "O" contains additional terms and conditions applicable to this AGREEMENT. To the extent Exhibit "O" conflicts with the terms contained in this AGREEMENT, the most stringent and restrictive provisions apply.

IV. TIME FOR BEGINNING AND COMPLETION

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the COUNTY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the COUNTY, in the event of a delay attributable to the COUNTY, or because of unavoidable delays caused by an act of God or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the COUNTY is required to extend the established completion time.

V. PAYMENT PROVISIONS

The CONSULTANT shall be paid by the COUNTY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the COUNTY'S Project Manager.

VI. SUBCONTRACTING

The COUNTY permits subcontracts for those items of work as shown in Exhibit "G" attached hereto, and by this reference made part of this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown in Exhibit "G."

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the COUNTY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts shall contain all applicable provisions of this AGREEMENT.

With respect to subconsultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the COUNTY. No permission for subcontracting shall create, between the COUNTY and subcontractor, any contract or any other relationship. A DBE certified subconsultant is required to perform a minimum amount of their subcontracted agreement that is established by the WSDOT Highways and Local Programs Project Development Engineer in consultation with the COUNTY.

VII. EMPLOYMENT

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the COUNTY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the COUNTY, and any and all claims that may arise under any Worker's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, Washington State (STATE), or the COUNTY, except regularly retired employees, without written consent of the public employer of such person.

VIII. NONDISCRIMINATION

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973
(23 USC Chapter 3 Section 324)
- Rehabilitation Act of 1973
(29 USC Chapter 16 Subchapter V Section 794)
- Age Discrimination Act of 1975

(42 USC Chapter 76 Section 6101 et seq.)

- Civil Rights Restoration Act of 1987
(Public Law 100-259)
- Americans With Disabilities Act of 1990
(42 USC Chapter 126 Section 12101 et seq.)
- 49 CFR Part 21
- 23 CFR Part 200
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or termination, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the COUNTY and further that the CONSULTANT shall be barred from performing any services for the COUNTY now or in the future unless a showing is made satisfactory to the COUNTY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest, agrees as follows:

- A. COMPLIANCE WITH REGULATIONS: The CONSULTANT shall comply with the Regulations relative to non-discrimination in the same manner as in Federal-assisted programs of the Department of Transportation, 49 CFR 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. NONDISCRIMINATION: The CONSULTANT, with regard to the work performed by it during this AGREEMENT, shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations, either by competitive bidding or negotiation, made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative

to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

- D. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the COUNTY, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the COUNTY shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the CONSULTANT under this AGREEMENT until the CONSULTANT complies, and/or
 2. Cancellation, termination or suspension of this AGREEMENT, in whole or in part.
- F. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action, with respect to any subconsultant or procurement as the COUNTY or the Federal Highway Administration may direct, as a means of enforcing such provisions including sanctions for noncompliance provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the COUNTY to enter into such litigation to protect the interests of the COUNTY, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. **UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington, which prohibits unfair employment practices.

IX. TERMINATION OF AGREEMENT

The right is reserved by the COUNTY to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the COUNTY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "I" for the type of agreement used.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the COUNTY for any excess paid.

If the services of the CONSULTANT are terminated by the COUNTY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the COUNTY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required that was satisfactorily completed to date of termination, whether that work is in a form or a type that is usable to the COUNTY at the time of termination, the cost to the COUNTY of employing another firm to complete the work required and the time which may be required to do so, and other factors that affect the value to the COUNTY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount that would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT'S or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the COUNTY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the Project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the COUNTY. The subsection shall not be a bar to renegotiation of this AGREEMENT between the surviving members of the CONSULTANT and the COUNTY, if the COUNTY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the COUNTY'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this Section.

Payment for any part of the work by the COUNTY shall not constitute a waiver by the COUNTY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the COUNTY. Forbearance of any rights under this AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. CHANGES OF WORK

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the COUNTY, without additional compensation thereof. Should the COUNTY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the COUNTY. This work shall be considered as extra work and will be paid for as herein provided under Section XIV.

XI. DISPUTES

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the COUNTY shall be referred for determination to the Director of the Department of Transportation or the COUNTY Road Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that, if an action is brought challenging the Director of the Department of Transportation or the COUNTY Road Engineer's decision, that decision shall be subject to *de novo judicial review*. If the parties to this AGREEMENT mutually agree, disputes concerning

alleged design errors will be conducted under the procedures found in Exhibit "J," and disputes concerning claims will be conducted under the procedures found in Exhibit "K."

XII. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the King County Superior Court of the State of Washington. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the King County Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the King County Superior Court of the State of Washington.

XIII. LEGAL RELATIONS

The CONSULTANT shall comply with all Federal, State, and Local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the COUNTY and the STATE and their officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT, provided that nothing herein shall require a CONSULTANT to indemnify the COUNTY and the STATE against and hold harmless the COUNTY and the STATE from claims, demands or suits based solely upon the conduct of the COUNTY and the STATE, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the COUNTY and the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the COUNTY and the STATE of defending such claims and suits, etc., shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the COUNTY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the COUNTY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the COUNTY shall be responsible for administration of construction contracts, if any, on the Project. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide on-call assistance to the COUNTY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

XIV. Insurance Coverage

- A. Worker's Compensation and Employer's Liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than @ DOLLARS (\$@) for bodily injury, including death and property damage. The per occurrence amount shall not exceed @ DOLLARS (\$@).
- C. Vehicle liability insurance for any automobile used in an amount not less than a @ DOLLAR (\$@) combined single limit.

Excepting the Worker's Compensation insurance and any Professional Liability insurance secured by the CONSULTANT, the COUNTY will be named on all policies of insurance as an additional insured. The CONSULTANT shall furnish the COUNTY with verification of insurance and endorsements required by the AGREEMENT. The COUNTY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit to the COUNTY a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the COUNTY.

The CONSULTANT's Professional Liability to the COUNTY shall be limited to the amount payable under this AGREEMENT or one million dollars, whichever is the greater, unless modified by Exhibit "L." In no case shall the CONSULTANT's Professional Liability to third parties be limited in any way.

The COUNTY will pay no progress payments under Section V until the CONSULTANT has fully complied with this Section. This remedy is not exclusive; and the COUNTY and the STATE may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

XV. EXTRA WORK

- A. The COUNTY may at any time by written order make changes within the general scope of this AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the COUNTY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within 30 days from the date of receipt of the written order. However, if the COUNTY decides that the facts justify it, the COUNTY may receive and act upon a claim submitted before final payment of this AGREEMENT.

- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with this AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT shall not be increased, or considered to be increased, except by specific written supplement to this AGREEMENT.

XVI. ENDORSEMENT OF PLANS

The CONSULTANT shall place its endorsement on all plans, estimates or any other engineering data furnished by it.

XVII. FEDERAL AND STATE REVIEW

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

XVIII. XVII. CERTIFICATION OF THE CONSULTANT AND THE COUNTY

Attached hereto as Exhibit "M-1 (a and b)" are the Certifications of the CONSULTANT and the COUNTY, Exhibit "M-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying, and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is only required in AGREEMENTS over \$100,000 and Exhibit "M-4" is required only in AGREEMENTS over \$500,000.

XIX. XVIII. COMPLETE AGREEMENT

This document and referenced attachments contain all covenants, stipulations and provisions agreed upon by the parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XX. EXECUTION AND ACCEPTANCE

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written:

**COUNTY OF KING
STATE OF WASHINGTON**

CONSULTANT

Signature

Signature

LINDA DOUGHERTY

Name
For King County Executive

Date

Name

Title

Date

TAX I.D. No. _____

EXHIBIT A

SCOPE OF WORK

EXHIBIT B

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION

Name of DBE Certificate Number	Project Role	Description of Work	Amount to be Applied Toward Goal
1.			
2.			
3.			
4.			
5.			
6.			
7.			

Disadvantaged Business Enterprise Subcontracting Goal _____ DBE Total \$ _____

EXHIBIT C

@ELECTRONIC EXCHANGE OF ENGINEERING AND OTHER DATA OR @NOT USED

**APPLICABLE ONLY IF COUNTY AGENCY HAS A POLICY REGARDING THE ELECTRONIC
EXCHANGE OF ENGINEERING AND OTHER DATA, OTHERWISE NOT USED**

EXHIBIT D

PAYMENT (COST PLUS FIXED FEE)

The CONSULTANT shall be paid by the COUNTY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for all work performed or services rendered and for all labor, materials, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform to all applicable portions of 48 CFR 31 and the Terms and Conditions contained in Exhibit "O." The term "actual cost" is subject to the limitations presented in Exhibit "O."

A. Actual Costs

Payment for all consulting services for this Project shall be on the basis of the CONSULTANT'S actual cost plus a Fixed Fee. The actual cost shall include direct salary cost, overhead, direct non-salary costs, and fixed fee.

1. **Direct Salary Costs:** The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the COUNTY.
2. **Overhead Costs:** Overhead costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT under Overhead Progress Payment Rate. Total overhead payment shall be based on the method shown in the heading of this AGREEMENT. The two options are explained as follows:
 - a. **Fixed Rate:** If this method is indicated in the heading of this AGREEMENT, the COUNTY agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of this AGREEMENT.
 - b. **Actual Cost:** If this method is indicated in the heading of the AGREEMENT, the COUNTY agrees to reimburse the CONSULTANT the actual overhead costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.

A summary of the CONSULTANT'S cost estimate and the overhead computation is shown in Exhibit "E" attached hereto and by this reference made part of this AGREEMENT. When an Actual Cost method is used, the CONSULTANT (prime and all subconsultants) will submit to the COUNTY, within six months after the end of each firm's fiscal year, an overhead schedule in the format required by the COUNTY (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate.

Failure to supply this information by either the prime consultant or any of the subconsultants shall cause the COUNTY to withhold payment of the billed overhead costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The COUNTY, STATE and/or the Federal Government may perform an audit of the CONSULTANT's books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. **Direct Non-salary Costs:** Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the COUNTY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the COUNTY'S Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the Project. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the COUNTY upon request. All above charges must be necessary for the services to be provided under this AGREEMENT.
4. **Fixed Fee:** The Fixed Fee, which represents the CONSULTANT's profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional Fixed Fee, which could be authorized from the Management Reserve Fund. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the Consultant enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX, entitled "Termination of Agreement."
5. **Management Reserve Fund:** The COUNTY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."
6. **Maximum Total Amount Payable:** The Maximum Amount Payable by the COUNTY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.

B. Monthly Progress Payments

The CONSULTANT may submit billings to the COUNTY for reimbursement of Actual Costs plus the calculated overhead and fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the COUNTY and accompanied by the monthly progress reports required under Section III, "General Requirements," of this

AGREEMENT. The billings will be supported by an itemized listing for each item including direct salary, direct non-salary, and allowable overhead costs, to which will be added the prorated Fixed Fee. To provide a means of verifying the billed salary costs for CONSULTANT employees, the COUNTY may conduct employee interviews. These interviews may consist of recording the names, titles, and present duties of those employees performing work on the Project at the time of the interview.

C. Final Payment

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the COUNTY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment that the CONSULTANT may have against the COUNTY, unless such claims are specifically reserved in writing and transmitted to the COUNTY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the COUNTY may have against the CONSULTANT or to any remedies the COUNTY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item, and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the COUNTY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the COUNTY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the COUNTY for audit findings.

D. Inspection of Cost Records

The CONSULTANT and their subconsultants shall keep available for inspection by representatives of the COUNTY, STATE, and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

EXHIBIT E

**CONSULTANT FEE DETERMINATION - SUMMARY SHEET
COST PLUS FIXED FEE**

EXHIBIT F
BREAKDOWN OF CONSULTANT OVERHEAD COST

EXHIBIT G

SUBCONTRACTED WORK

The COUNTY permits subcontracts for the following portions of the work of this AGREEMENT:

<i>Firm Name</i>	<i>Work Description</i>	<i>Dollar Value</i>	<i>Percent of Total Project Dollar Value</i>
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EXHIBIT G-1

**SUBCONSULTANT FEE DETERMINATION - SUMMARY SHEETS
COST PLUS FIXED FEE**

EXHIBIT G-2

BREAKDOWN OF SUBCONSULTANTS OVERHEAD COST

EXHIBIT H

TITLE VI ASSURANCES

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the COUNTY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-Discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Subconsultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by COUNTY, STATE, or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the COUNTY, STATE, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-Compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the COUNTY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies; and/or,
 - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part.
6. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pertinent thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the COUNTY, STATE or FHWA may direct as a means of enforcing such provisions, including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request that the COUNTY and the STATE enter into such litigation to protect the interests of the COUNTY and the STATE and, in addition, the CONSULTANT may request that the United States enter into such litigation to protect the interests of the United States.

EXHIBIT I

PAYMENT UPON TERMINATION OF AGREEMENT BY THE COUNTY OTHER THAN FOR FAULT OF THE CONSULTANT (Refer to Agreement, Section IX)

Lump Sum Contracts

A final payment shall be made to the CONSULTANT which, when added to any payments previously made, shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts

A final payment shall be made to the CONSULTANT, which, when added to any payments previously made, shall total the actual costs plus the same percentage of the Fixed Fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Specific Rates of Pay Contracts

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct non-salary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

EXHIBIT J

ALLEGED CONSULTANT DESIGN ERROR PROCEDURES

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the COUNTY believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 – Potential Consultant Design Error(s) is Identified by COUNTY'S Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the COUNTY'S Project Manager to notify the Director of the Department of Transportation or the COUNTY Road Engineer regarding the potential design error(s). For federally funded projects, the Region Highways and Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of the Department of Transportation or the COUNTY Road Engineer may appoint a COUNTY staff person other than the Project Manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 – Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of the Department of Transportation or the COUNTY Road Engineer's concurrence, the Project Manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 – Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the Project Manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The Project Manager and other appropriate COUNTY staff should represent the COUNTY and the consultant should be represented by their Project Manager and any personnel (including subconsultants) deemed appropriate for the alleged design error(s) issue.

Step 4 – Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error occurred. If this is the case, then the Director of the Department of Transportation or the COUNTY Road Engineer, or their representative, negotiates a settlement with the consultant. The settlement would be paid to the County or the amount would be reduced from the consultant's agreement with the County for the services on the project in which the design error took place. The County is to provide Highways and Local Programs, through the Region Local Programs Engineer, a summary of the

settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of the Department of Transportation or the COUNTY Road Engineer for review. If the Director of the Department of Transportation or the COUNTY Road Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Step 5 – Forward Documents to Highways and Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Highways and Local Programs Engineer to Highways and Local Programs for their review and consultation with the FHWA. Highways and Local Programs will meet with representatives of the COUNTY and the consultant to review the alleged design error(s) and attempt to find a resolution to the issue. If necessary, Highways and Local Programs will request assistance from the Attorney General's Office for legal interpretation. Highways and Local Programs will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the COUNTY and consultant adjust the scope of work and costs to reflect the agreed upon resolution. Highways and Local Programs, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the COUNTY and consultant may seek settlement by arbitration or by litigation.

EXHIBIT K

CONSULTANT CLAIM PROCEDURES

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of the Department of Transportation or the COUNTY Road Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the COUNTY to consider a potential claim by the consultant.

Step 1 – Consultant Files a Claim with the COUNTY Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the COUNTY'S Project Manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside the agreement scope of work.

Step 2 – Review by COUNTY Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the COUNTY'S Project Manager. The Project Manager will review the consultant's claim and will meet with the Director of the Department of Transportation or the COUNTY Road Engineer to determine if the COUNTY agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the COUNTY'S recommendation for federal participation in the claim to the WSDOT Highways and Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from COUNTY funds.

If the COUNTY Project Manager, Director of the Department of Transportation or the COUNTY Road Engineer, WSDOT Highways and Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the COUNTY shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the COUNTY does not agree with the consultant's claim, proceed to step 3 of the procedures.

Step 3 – Preparation of Support Documentation Regarding Consultant's Claim(s)

If the COUNTY does not agree with the consultant's claim, the Project Manager shall prepare a summary for the Director of the Department of Transportation or the COUNTY Road Engineer that includes the following:

- Copy of information supplied by the consultant regarding the claim;
- COUNTY'S summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- COUNTY'S summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the COUNTY does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 – Director of the Department of Transportation or COUNTY Road Engineer Reviews Consultant Claim and COUNTY Documentation

The Director of the Department of Transportation or the COUNTY Road Engineer shall review and administratively approve or disprove the claim, or portions thereof, which may include getting COUNTY Council approval (as appropriate to COUNTY dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Highways and Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from COUNTY funds.

Step 5 – Informing Consultant of Decision Regarding the Claim

The Director of the Department of Transportation or the COUNTY Road Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 – Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The COUNTY shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

EXHIBIT L

LIABILITY INSURANCE INCREASE

The professional liability limit of the CONSULTANT to the COUNTY identified in Section XIII of this AGREEMENT, Legal Relations and Insurance, is amended to \$_____.

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$_____.

- Such insurance coverage shall be evidenced by one of the following methods:
 1. Certificate of Insurance.
 2. Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the COUNTY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the COUNTY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$_____.

- Include all costs, fee increase, and premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

EXHIBIT M-1(a)

CERTIFICATION OF CONSULTANT

Project No. _____

Local Agency: **King County**

I hereby certify that I am the _____ and duly authorized
representative of the firm of _____ whose address is _____
_____ and that neither the above firm nor I have:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure the AGREEMENT.
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out this AGREEMENT; except as here expressly stated (if any):

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

EXHIBIT M-1(b)

CERTIFICATION OF COUNTY OFFICIAL

I hereby certify that I am the COUNTY Official of King County, Washington, and that the above consulting firm or his representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ or retain, or agree to employ or retain, any firm or person, or
- (b) Pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any):

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

EXHIBIT M-2

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS**

EXHIBIT M-3

**CERTIFICATION REGARDING THE RESTRICTIONS OF
THE USE OF FEDERAL FUNDS FOR LOBBYING**

EXHIBIT M-4

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____.** This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Name _____

Title _____

Date of Execution*** _____

* Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

EXHIBIT N

KING COUNTY DISADVANTAGED BUSINESS ENTERPRISES

@Nondiscrimination—49 CFR part 26. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of United States Department of Transportation—assisted contracts. Failure by the Consultant to carry out these requirements will be a material breach of this Agreement, which may result in the termination of the Agreement or such other remedy, as the County deems appropriate.

- (B) DBE Contract Goal. The County has established a DBE goal of @ for this Contract. As a condition of award, the successful proposer must make good faith efforts to meet this DBE goal. Good faith efforts are established when the proposer documents that it has obtained enough DBE participation to meet the DBE goal; or documents that it has made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

In accordance with this subsection, proposers must submit with their Submittals a Declaration Regarding DBE Solicitation and Utilization with an Attachment A for each proposed DBE subconsultant. A copy of this Declaration is included in Attachment 3 of this solicitation. The proposer must report actual DBE participation proposed for this Project to enable King County to determine accurately whether the DBE goal has been met.

Compliance with this requirement is a matter of responsiveness.

- (C) Good Faith Efforts Re: DBE Participation. If the DBE goal is not met, evidence of adequate good faith efforts to meet the goal must be provided at the time of proposal Submittals. The following is a nonexclusive list of types of actions that the County will consider as part of the proposer's good faith efforts to obtain DBE participation.
- (1) Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. Proposers must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. Proposers' must determine with certainty if taking appropriate steps to follow up initial solicitations interests the DBEs.
 - (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.
 - (3) Providing interested DBEs with adequate information about the requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - (4) Negotiating in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE subconsultants and suppliers, so as to facilitate DBE participation.
 - (5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

- (6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or proposer.
 - (7) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - (8) Effectively using the services of available minority/women community organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (D) Protest Procedure. If the County determines that the apparent successful proposer has failed to meet the DBE participation requirements of this Section F, PART 2, King County will notify the proposer in writing prior to contract award. The proposer may obtain administrative review of the COUNTY'S determination by filing a protest in accordance with the protest procedures set forth in "Protests and Appeals" (Section III. PROCUREMENT PROCESS, Sub-Section B).
- (E) Determining DBE Eligibility and Counting Participation:
- (1) DBE Listing. A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available from that office at (360) 753-9693. For purposes of this solicitation, all DBE firms must be accepted as certified by OMWBE by the date and time proposals are due.
 - (2) Counting DBE Participation. Requirements for counting DBE participation toward the DBE contract goal established in subsection Section F PART 2 paragraph B are provided for in 49 CFR 26.55. When a DBE participates in a contract, only the value of the work actually performed by the DBE will be counted.
 - (a) King County will count the entire amount of the portion of a consultant contract that is performed by the DBE's own forces. This shall include the cost of supplies and materials obtained by the DBE for the work of the contract and supplies purchased or equipment leased by the DBE. This shall exclude supplies and equipment the DBE subconsultant purchases or leases from the prime consultant or its affiliate.
 - (b) King County will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, contractor or managerial services, or for providing bonds or insurance, provided the fees are reasonable and typical with fees customarily allowed for similar services.
 - (c) When a DBE subcontracts part of the work to another firm, King County will only count the value of the subcontracted work if the DBE's subcontractor is also a DBE. King County will not count as participation the work that a DBE subcontracts to a non-DBE firm.
 - (3) DBE Consultant. King County will only count the work a DBE prime consultant performs with its own forces as well as the work performed by DBE subconsultants.
 - (4) Joint Venture. When a DBE performs as a participant in a joint venture, King County will only count that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces.
 - (5) Commercially Useful Function. King County will count expenditures to a DBE contractor only if the DBE is performing a commercially useful function on that contract.
 - (a) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and

supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.

- (b) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds is passed in order to obtain the appearance of DBE participation.
 - (c) A DBE does not perform a commercially useful function if it fails to exercise responsibility with its own work force for at least 30 percent of the total cost of its contract, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
- (6) Expenditures with DBEs. Expenditures with DBEs for materials or supplies shall be counted as provided in the following:
- (a) **Manufacturer** If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - (b) **Regular Dealer** If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - (i) To be a regular dealer a firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - (ii) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided in this Section (5)(b), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - (iii) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
 - (c) **Purchased from a DBE** With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and typical for the services rendered. No part of the cost of the materials and supplies themselves shall be counted.
- (7) Further Information. If further information is desired concerning DBE participation, inquiry may be directed to:

Business Development and Contract Compliance
King County Courthouse
MS: KCC-EX-0402
516 Third Avenue Room 402
Seattle, WA 98104
Phone: (206) 205-0700

(F) Reporting and Enforcement; Breach of Contract.

- (1) The selected Consultant shall be required to submit a "Quarterly Affidavit of Amounts Paid DBE Participants" to the Project Representative on a quarterly basis for every quarter in which the contract is active (work is accomplished) or upon completion of the project, as appropriate. A copy of each report shall be submitted to the DBE Liaison Officer: Phyllis Alleyne, Manager—Business Development and Contract Compliance, 516 Third Avenue Room 402, Mail Stop: KCC-EX-0402, Seattle, WA 98104-. The quarterly reports are due on the 20th of January, April, July and October for the four respective quarters. The dollars reported will be in accordance with subparagraph E above and 49 CFR Part 26.
- (2) The purpose of the DBE requirements of this Contract is to ensure that DBEs actually perform work committed to them at the time of execution of the Agreement by the selected Consultant. The failure to comply with the mandatory DBE requirements of this Section F PART 2 shall constitute a material breach of the Agreement. In addition to any other rights and remedies the County may have under the Agreement or at law or equity relating to said breach, the County may, in its discretion, withhold making payment to the selected Consultant until such time as compliance is achieved.

(G) DBE Replacement.

- (1) The Consultant shall not terminate for convenience a DBE subconsultant and then perform the work of the terminated subconsultant without the prior written consent of the DBE Liaison Officer. All such requests must be in writing to the DBE Liaison Officer at the address set forth in subparagraph F of this PART 2 above.
- (2) The Consultant shall send written notification to the DBE Liaison Officer prior to replacing any DBE subconsultant. When a DBE subconsultant is terminated, or fails to complete its work for any reason, the Consultant shall make good faith efforts to find another DBE subconsultant to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the original DBE to the extent needed to meet the DBE goal. The County reserves the right to withhold payment on any work originally designated to be performed by a DBE subconsultant if the selected Consultant fails to comply with the provisions of this section. If the selected Consultant fails to comply, the contracting officer may issue a termination for default proceeding.

- (H) Changes to DBE Contract Goal. The County will review proposed changes or amendments to the Agreement on a case-by-case basis for the application and possible adjustment of the DBE Contract Goal set forth in subparagraph B of PART 2.

IF NO GOAL DELETE THE LANGUAGE ABOVE AND USE THE FOLLOWING. IF A GOAL IS REQUIRED, DELETE THE FOLLOWING.

@Nondiscrimination—49 CFR part 26. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of

United States Department of Transportation—assisted contracts. Failure by the Consultant to carry out these requirements will be a material breach of this Agreement, which may result in the termination of the Agreement or such other remedy, as the County deems appropriate.

- (B) DBE Program. King County has determined that no DBE goal will be established for this Contract. However, the County requires that the Consultant report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance.
- (C) Efforts to Increase DBE Participation. Even though this Contract has no DBE goal, the County still encourages Consultants to pursue opportunities for DBE participation. To that end, Consultants are encouraged to:
- (1) Advertise opportunities for subcontractors and suppliers ("subcontractors") in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting proposals directly from DBEs.
 - (2) Utilize the services of available minority community organizations, minority consultant groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.
 - (3) Establish delivery schedules, when requirements of the contract allow, that encourage participation by DBEs and other small businesses.
 - (4) Achieve DBE attainment through joint ventures.
- (D) DBE Listing. A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women's Business Enterprises ("OMWBE") is available from that office at (360) 753-9693. For purposes of this contract, a DBE firm must be certified by the Washington State OMWBE as of the date and time of bid submittal.
- (E) Procedure Applicable when DBEs Are Utilized. Concurrent with the use of any DBE subcontractor or supplier the Consultant shall provide notice of such use in writing to BDCC. Upon receipt of said notice, BDCC shall provide the Consultant with the applicable procedures for counting DBE participation. Assistance with this Section is available from BDCC at (206) 205-0700. Notice referenced herein should be delivered to the following address:

Business Development and Contract Compliance Section
Business Relations and Economic Development
MS: BOA-EX-2000
701 Fifth Avenue, Suite 2000, Bank of America
Seattle, WA 98104-7097

THE BLUE TEXT/@ IS A PROMPT FOR CHOOSING LANGUAGE &/OR INSERTING OR DELETING TEXT.

RED TEXT NOTES ARE INSTRUCTIONS.

DELETE THE BLUE PROMPTS AND ALL RED INSTRUCTIONS WHEN FINALIZING YOUR DOCUMENT.

DO NOT CHANGE THE INFORMATION IN THE FOOTER OF THIS DOCUMENT, OTHER THAN ENSURING THAT THE APPROPRIATE CONTRACT NUMBER IS INSERTED.

EXHIBIT O

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CONTRACTTITLE

CONTRACT NO. E@@@@@E@@

EXHIBIT O

THIS AGREEMENT, made and entered into by and between King County, through the Department of @ ("County") and LegalName ("ConsultantName"), a corporation with a place of business at @, @, Washington, 98@ ("Consultant"), collectively referred to as "Parties", shall be effective upon the authorized signatures of both Parties to this Agreement ("Effective Date").

WHEREAS, The County desires to retain the Consultant to perform certain professional services on a Work Order basis, including engineering services necessary to perform @DESCRIPTION OF SERVICES; and

WHEREAS, the Consultant represents it has available and offers to provide qualified personnel and facilities necessary to accomplish such services required within the required time and that there are no conflicts of interest prohibited by law in entering into this Agreement with the County;

The Parties enter into this Agreement. The term Agreement and Contract shall be used interchangeably and refer to this Agreement, Contract No. E@@@@@E@@.

SECTION 1. PERIOD OF PERFORMANCE

- A. The Period of Performance shall end 365 calendar days after execution of this Agreement; provided however, at the County's sole discretion, this Agreement may be extended for up to two additional years in one-year increments or until the not to exceed total Price is reached, whichever comes first. Execution of the Agreement is the date the County signs this Agreement. In no event shall this contract be extended beyond the three years. If the County determines to extend this Agreement as described herein, the County shall issue an amendment extending the Period of Performance.

Period of Performance cannot exceed three year total.

IF NO OPTION YEARS SUBSTITUTE THE FOLLOWING PARAGRAPH FOR A. DELETE IF UNUSED:

- A. The Period of Performance shall end 365 calendar days after execution of this Agreement.
- B. Time. Time is a material consideration in the performance by the Consultant under this Agreement. The Consultant shall complete its work and services within the Work Order schedule, including any established milestones, task completion dates, and/or Work Order completion dates set forth in the Work Order's Scope of Work. The completion date(s) within a Work Order may be modified by a written directive; however, the Period of Performance for the Agreement may only be modified through an amendment to this contract. No completion dates shall be extended because of any unwarranted delays attributable to the Consultant. Completion dates may be extended in the event of a delay caused by the County which results in a delay in the performance of an affected task, or because of unavoidable delay caused by any governmental action or other conditions beyond the control of the Consultant, which could not be reasonably anticipated and which results in a delay in the performance of an affected task.

- C. Time Extensions. The Total Price, Period of Performance and Work Order budgets shall not be increased because of any unwarranted delays or costs attributable to the Consultant. In the event of a delay not attributable to the Consultant which delay (1) could not be reasonably anticipated and (2) results in an increase in costs to perform the work, the County may, through a written directive, increase the Work Order budget. In no event shall the Total Price or Period of Performance be increased.

SECTION 2. ADMINISTRATION AND SUPERVISION

- A. COUNTY. Management and general supervision for the Contract will be the responsibility of King County, Department of @.
1. The Department Director or its designee shall be identified in writing at the time of Contract execution. The Department Director and its designee are the only authorized County personnel who may sign amendment(s) and authorize changes to the Period of Performance up to the maximum time limits identified in this Agreement.
 2. An employee of the County, hereinafter called the "Project Representative," who shall be designated in writing by the County, shall perform day-to-day management of this Contract. All written correspondence shall be directed to the Project Representative.
 - a. Unless otherwise indicated in writing by the Department Director or its designee, the Project Representative will issue notices to proceed, approve and execute Work Order scope and budget, approve all requests for payment, accept requests to increase Labor Rates and changes in Overhead Rates, authorize termination or modification of tasks, and approve in writing changes to the Work Order budgets.
 - b. The Project Representative will also be responsible for determining when the Consultant has satisfactorily performed all work and for ensuring that the Consultant complies with all provisions of this Agreement, including non-discrimination and affirmative action requirements.
 3. An employee of the County, hereinafter called the "Work Order Project Manager" shall be responsible for day-to-day management of individual work orders. For each Work Order the Project Representative will designate one Work Order Project Manager.
 - a. The Work Order Project Manager will negotiate Work Order scope and budget.
 - b. The Work Order Project Manager, in consultation with the Project Representative, will also be responsible for determining when the Consultant has satisfactorily performed all work and for ensuring that the Consultant complies with all provisions of this Agreement, including non-discrimination and affirmative action requirements.
- B. CONSULTANT. The Consultant represents that it has, or will obtain, all personnel necessary to perform the services required under this Agreement and that such personnel shall be qualified, experienced and licensed as may be necessary or required by laws and regulations to perform such services. All services required under this Agreement shall be performed by the Consultant, its employees, or by subconsultants whose selection has been authorized by the County; provided, that the County's authorization shall not relieve the Consultant or its subconsultants from any duties or

obligations under this Agreement or at law to perform in a satisfactory and competent manner. All contractual duties, requirements and obligations that the Consultant owes to King County shall also be owed to King County by the Consultant's subconsultants retained to perform the work pursuant to this Agreement. The term "Consultant" shall refer to ConsultantName and all of its subconsultants.

1. Authorized Subconsultants. The Contract shall identify in the Cost Summary Exhibit G the subconsultants who are authorized to perform work under this Contract.
2. Process for Adding or Removing Subconsultants. If during the term of this Contract, the Consultant wishes to add or remove a subconsultant, the Consultant shall provide the Project Representative with a written request identifying the proposed change. The written request shall include the following information:
 - a. Identity of the subconsultant and the work to be performed;
 - b. Resumes and documentation outlining the subconsultant's experience;
 - c. Labor costs and Overhead rate or Billing Rate information and supporting documentation; and
 - d. If the subconsultant is to perform work of the consultant or another subconsultant already identified in Exhibit G, an explanation of why the work is going to be transferred to a new subconsultant.
3. County Approval of Subconsultants. Before any subconsultant not already identified in the Contract can perform any work under this Contract, the County shall provide written authorization to the Consultant. Authorization shall not be unreasonably withheld. Such written authorization shall be followed up with an amendment to the Contract.
4. Substitution of Personnel. The Consultant recognizes and agrees that if a change is made substituting or changing assigned personnel, the Consultant shall be responsible for any and all costs associated with "Transfer of Knowledge and Information". The Transfer of Knowledge and Information shall be defined to include the labor hours spent reviewing contract documentation, participating in meetings with Contract/Work Order personnel, and participating in site visits to familiarize oneself with the Project and location(s) of the work. The County shall not pay for any time spent for the "Transfer of Knowledge and Information".
 - a. The Consultant shall provide sufficient advance notice of any intention to remove or reassign personnel.
 - (1) For individuals who are not identified as "Key Personnel" in Exhibit R, the Consultant does not need to provide advance notice to the Project Representative, provided however, the substituted individual's labor rate was approved in the contract, Exhibits E, F, or G. If the labor rate was not approved in Exhibits E, F or G, then the Consultant shall provide documentation supporting the labor rate for the substituted personnel prior to submitting an invoice and the labor rate shall not significantly differ from the originally assigned personnel.
 - (2) Exhibit R, Key Personnel, is a listing of individuals. Notice for the substitution of individuals and positions identified as Key Personnel shall include the following:
 - (a) An explanation of the reason for the reassignment or removal;

- (b) The name of the person proposed to replace the individual;
 - (c) Identification of the experience and qualifications of the individual proposed;
 - (d) A plan and schedule showing how the Transfer of Knowledge and Information between the departing and incoming individual will occur; and
 - (e) Proposed allocation of hours associated with the entire Transfer of Knowledge and Information.
- b. The Consultant shall not remove or reassign the personnel assigned to a Work Order without written consent from the Work Order Project Manager.
- c. The Consultant shall provide a certification with its invoice certifying that the time associated with the "Transfer of Knowledge and Information" is not billed to the County and is not a cost borne by the County.
- 5. County Request Removal Personnel. The Consultant shall remove from the Work Order any personnel or subconsultant if, after the matter has been thoroughly considered by the County and the Consultant, the County considers such removal necessary and in the best interests of the Work Order and so advises the Consultant in writing.

C. WORK ORDER PROCESS

- 1. County Initiates Work Order Process. After execution of this Agreement by the County and the Consultant, the Project Representative may request ConsultantName to submit a proposal by issuing a written Work Order Request. The Work Order Request shall include a description of the nature and extent of the project, its scope, a preliminary schedule and budget, and a list of probable deliverables.
- 2. Consultant Proposal. ConsultantName shall submit a proposal addressing the Work Order Request, which proposal shall include a Work Order budget, level of effort identifying personnel and Labor Rates per task, Key Personnel when requested, and schedule. The proposal shall use the cost elements (Labor Rates, Overhead, Other Direct Costs, Fixed Professional Fee, and Billing rates) identified in Exhibits E, F, and G, Cost Summaries, attached hereto and incorporated herein by reference.
- 3. Execution of the Work Order. The parties will negotiate and formalize the agreement reached in an executed Work Order. An executed Work Order is a Work Order that is signed by both parties or a letter from the Project Representative identifying all elements of the Work Order.
 - a. Elements of a Work Order. A Work Order shall include, at a minimum, the following elements: detailed scope of work with specified deliverables, schedule for deliverables and completion of the Work Order, Key Personnel when requested, and level of effort identifying hours associated with personnel and Labor Rates for each task and subtask. Work Orders should be numbered sequentially.
 - b. Disagreement with Work Order Letter. If the Consultant disagrees with any elements identified in a letter executing the Work Order, the Consultant shall notify the Project Representative within three (3) business days after receipt of the letter. The Consultant shall not perform any work identified in the letter until the parties have reach agreement on the Work Order elements and such terms

have been formalized in a letter sent by the Project Representative or a Work Order signed by both parties.

4. Notice to Proceed. The Project Representative may issue a notice to proceed for the Work Order or specific tasks therein. Upon receipt of a notice to proceed, the Consultant shall promptly commence work identified in the notice to proceed.
5. Limitations to Initiating and Executing Work Orders. Execution of individual Work Order(s) may occur at any time up until the Period of Performance has expired or the Total Price is reached, whichever occurs first. A Work Order shall not be executed after the Period of Performance has expired.
 - a. Continuation of Agreement. If services to be performed under an executed Work Order continue after expiration of the Period of Performance, this Agreement shall continue to be in full force and effect with respect to that executed Work Order; provided however, no additional Work Orders may be issued or executed.
6. Work Orders under \$10,000. In certain circumstances the County may have an immediate need for the Consultant to perform limited services quickly. In such event, the Project Representative may direct the Consultant in writing to perform services for a specified scope of work, identifying the personnel who will perform the services and a not to exceed dollar limitation. In no event shall a Work Order issued under this provision exceed \$10,000.

SECTION 3. SCOPE OF WORK

- A. The County hereby retains the Consultant upon the terms and conditions contained herein to perform certain work and services on a Work Order basis, as required by the County during the Period of Performance. The general description of work and services to be performed by the Consultant is set forth in Exhibit A, Scope of Work, attached hereto, and incorporated herein by this reference. If applicable, a general Schedule is set forth in Exhibit A, attached hereto and incorporated herein by reference.
- B. The County may make available to the Consultant, without cost, copies of as-built plans, drawings, survey notes, studies, soil reports, maintenance and performance records, and other relevant data, and property descriptions of various County facilities related to work authorized under a work order, which are readily available, and on file at the County. These documents are available solely as additional information to the Consultant and do not relieve the Consultant of its duties and obligations under this Agreement nor constitute any representation or warranty by the County as to conditions or other matters related to Work Orders issued pursuant to this Agreement. The Consultant may reasonably rely on the data contained in such documentation; however, the Consultant is responsible to perform a review of the data within thirty (30) calendar days of receipt of the data and notify the County immediately in writing of any perceived inaccuracies or discrepancies with the data. If, at a later time, the Consultant discovers any defects with the data, the Consultant shall immediately and in writing inform the County of such defects.
- C. It shall be the responsibility of the Consultant to gather and become familiar with all site information including existing improvements.

SECTION 4. CHANGES IN WORK

- A. Changes to the Contract – Amendments.

1. Any changes to the Contract documents, except executed Work Orders, shall be made through an amendment signed by the Department Director or its designee.
 - a. The term amendment may be used interchangeably with the term Supplement.
2. The following actions shall be made through the execution of an amendment:
 - a. County exercising its option to extend the Period of Performance; provided however, the Period of Performance is not extended past three years.
 - b. Adding subconsultants and identifying cost elements associated with the subconsultant overhead, labor, and billing rates and fee.
 - c. Modifying existing Overhead and Labor Rates.
3. An amendment executed by the County and ConsultantName represents full and final agreement and resolution.

B. Changes to executed Work Orders

1. The County may, at any time, by written or oral directive direct the Consultant to make additions within the general scope of the services or work to be performed in a Work Order, and/or delete or revise portions of the Work Order. Any directive from the County to perform work that results in an increase or decrease in scope, changes to the Work Order budgets or Work Order schedule, or changes impacting the amount of the Work Order Fixed Professional Fee shall be made only by written agreement by the Project Representative prior to the work being performed. Any directive to a Work Order budget shall not constitute a change or entitle the Consultant to compensation in excess of the Total Price.
 - a. If the Project Representative gives the Consultant an oral directive, the Consultant shall document the oral directive and provide the Project Representative with a copy of the documented oral directive within five (5) calendar days of the directive.
 - b. A written or oral directive to the Consultant from anyone other than the Project Representative is not binding on the County.
2. A budget for the tasks comprising a Work Order will be established as part of the finalized Work Order. The Consultant shall complete its work and services within said Work Order budget.
 - a. For Work Orders valued over \$50,000, the Consultant shall not modify or shift funds between task line items within a Work Order budget without prior written authorization of the Project Representative. Adjustments to task budgets must be authorized in writing by the Project Representative prior to the work being performed and such authorization must specifically identify the task budgets impacted and the specific scope of work to be performed. Adjustments to task budgets are only authorized when the money is taken from a task budget where the work is complete and there is money remaining in the task budget.
3. In the event the Consultant identifies something that may impact a Work Order scope of work, Work Order Schedule and/or Work Order budget, ConsultantName shall inform the Project Representative within five (5) business days of the event and possible impacts to scope, schedule and cost. If appropriate, the parties shall by written agreement adjust the Work Order scope, schedule, and/or budget.

- a. If the Consultant believes work identified in a directive and/or adjustment to a task is not within the Work Order Scope of Work and/or causes an increase or decrease in cost or time required for performance of any services related to the Work Order, ConsultantName shall immediately, on behalf of itself or its subconsultants, and prior to performing any work, request in writing an equitable cost and/or schedule adjustment. Any request for an equitable cost and/or schedule adjustment shall be submitted to the Project Representative.
 - (1) The Consultant shall not perform the work identified in the directive and/or adjustment to the task until the County and Consultant execute a written agreement identifying the new work, schedule impacts and associated budget or the County issues a written letter denying the Consultant's request for an equitable cost and/or time adjustment.
 - (2) After receiving the County's denial letter, even if the Consultant disagrees with the County's decision, the Consultant shall perform the work as indicated in the directive and/or task adjustment. If the Consultant disagrees with the County's denial, ConsultantName shall notify the Project Representative of its disagreement and the reasons for its disagreement within ten (10) calendar days of receipt of the County's denial letter and the Consultant shall submit in accordance with Exhibit O Section 19 a claim for equitable adjustment in writing to the Department Director's designee within thirty (30) calendar days from the date of receipt of the County's decision. The County shall identify the Department Director's designee for purposes of this paragraph and Exhibit O Section 19 in the County's denial letter. Failure to file a written claim for equitable adjustment shall constitute acceptance of the County's decision and shall waive the Consultant's right to additional compensation or a time extension.

SECTION 5. RESPONSIBILITY OF THE CONSULTANT

A. Standard of Care

1. During performance under this Agreement, the Consultant shall make its best efforts to manage the Agreement such that work and services are provided and performed in a cost-effective and efficient manner. The Consultant shall complete its work and services within said Work Order budget.
2. The Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings, specifications, reports and other services prepared or performed pursuant to this Agreement. The Consultant shall perform its work to conform to generally accepted professional standards applicable to the types of services and work provided hereunder. The Consultant shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such plans, designs, drawings, specifications, reports and other services.
3. The County's approval of plans, drawings, designs, specifications, reports and other products of the professional services rendered hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither the County's review, approval or acceptance of, nor payment for, any of the

services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The County shall make a good faith effort to review materials in an expeditious manner; provided however that the County shall have a minimum of thirty (30) calendar days to review and provide comments on plans, drawings, specifications, reports or other products. The County typically completes its review within forty-five (45) calendar days.

4. Should the Consultant produce and maintain a document criticizing, challenging, or disagreeing with any decisions by the County concerning design and/or management of this Contract or Work Order, the design, and/or any findings or final conclusions, the Consultant shall (a) first discuss the matter with the County and try to reach resolution and (b) provide the County with a copy of the document within five (5) calendar days of producing the document. Any such document shall identify reasonable and realistic solutions.
5. The Consultant shall be knowledgeable and familiar with the County's Construction General Conditions and any County-provided specifications. Any specifications and documents drafted by the Consultant shall be consistent with County-provided specifications and should not create any ambiguity or conflict.
6. The Consultant shall not assign, sublet, mortgage, pledge as collateral, substitute for obligation, or otherwise encumber any rights, duties or interests accruing from this Agreement, other than accounts receivable, without the prior written consent of the County. Unless otherwise stated in the written consent to the assignment, sublet, mortgage, pledge or encumbrance, no such consent shall release the Consultant from any obligation under this Agreement.

B. Maintenance of Documentation

1. Document Retention Policy. The Consultant shall establish a Document Retention Policy consistent with Washington state law, King County Code, and the following requirements:
 - a. The Consultant shall comply with the Document Retention Policy.
 - b. The Document Retention Policy shall define Official Project Documentation and require that Official Project Documentation and other appropriate documentation be maintained in the Project/Work Order file.
 - c. Draft reports, specifications and drawings are not considered valid Official Project Documentation as they have been replaced and/or superseded by the final report, specifications, and drawings. The Document Retention Policy should address how draft reports, specifications and drawings are maintained in the Project/Work Order file.
 - d. The Consultant shall maintain documents on software format (and version) approved by the County.
 - e. The Consultant shall review its email to determine whether the email is considered Official Project Documentation or other appropriate documentation to be maintained in the Project/Work Order file. Any email not considered Official Project Documentation or appropriate documentation for the Project/Work Order file shall be deleted and not maintained in the Project/Work Order file.
 - f. The County shall review and approve the Document Retention Policy.

- g. The Project/Work Order file shall be available for review by the County or an authorized representative at any time.
2. Upon written request by the Project Representative, the Consultant shall provide the County with access to all documents and correspondence, including e-mail communications, memoranda, and all other written materials prepared or used in performance of work on this Contract and/or Work Order.
3. The Consultant is cautioned that information and documentation submitted to the County may become a public record in accordance with the Revised Code of Washington and may not be exempt from disclosure under the Washington State Public Disclosure Act.
 - a. Consultant shall mark all pages of Consultant's financial or personnel information that it considers proprietary or confidential. In the event the County receives a public disclosure request for such documentation, the County will advise the Consultant and will not release the marked documents for a period of not less than ten calendar days in order to give the Consultant an opportunity to obtain a court order prohibiting the release of the information in response to the public disclosure request. The County cannot insure that the Consultant's confidential or proprietary information would not be subject to release pursuant to a public disclosure request.

C. Duty of Confidentiality.

1. The Consultant acknowledges that unauthorized disclosure of information or documentation concerning this contract and/or Work Order may cause substantial economic loss or harm to the County. Except as otherwise required by Court Order or subpoena, the Consultant shall not without prior written authorization by the Project Representative:
 - a. Allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Agreement;
 - b. Allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation which relates to the technical or business activities of the County obtained, discovered, shared or produced pursuant to this Agreement; and/or
 - c. Disclose to any third party any calculations, notes, reports, drawings, electronic files, including any and all emails, or any other materials, information or documentation developed or obtained during the course of any performance of this Agreement.
2. The Consultant may disclose information and documentation to its employees who have a substantial need to know the specific information in question in connection with the Consultant's exercise of rights or performance of obligations under this Contract. The Consultant shall inform its subconsultants, employees, and representatives of their obligations under this Agreement and instruct them so as to ensure such obligations are met. If so requested by the Project Representative, the Consultant further agrees to require its subconsultants and individuals performing services pursuant to this Agreement to execute a Confidentiality Agreement.
3. The Consultant shall not release any information or documentation concerning the work under this Contract or any part thereof in the form of advertising, marketing

activities or publication including news releases or professional articles, without the prior written approval of the Project Representative. Any and all news releases, professional articles, advertising, publicity, or other marketing activities, which describes or discusses the contract and/or Work Order(s) shall have been reviewed and approved by the Project Representative prior to publication, disclosure and/or distribution. The Consultant may submit for review and approval a generic Project Abstract describing the component parts of the contract and/or Work Order(s). After receiving written approval of the Project Abstract from the Project Representative, the Consultant may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.

- D. In the event of any breach or threatened breach by the Consultant or subconsultants of their Duty of Confidentiality and the Maintenance of Project Documentation, the County will have all rights and remedies that are available to it at law or equity.
- E. This Section shall survive for six (6) years after the termination or expiration of this Contract.
- F. ConsultantName shall ensure that the paragraphs in Exhibit O Section 5, Responsibility of the Consultant, are included in each subconsultant's contract for work on this Contract.

SECTION 6. DELIVERABLES

- A. In the performance of this Agreement, the Consultant shall, to the extent practicable, design and draft specifications that provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods and processes.
- B. The Consultant shall not, in the performance of the work under this Agreement, produce a design or specification which would require the use of structures, machines, products, materials, construction methods, equipment, or processes which the Consultant knows to be available only from a single source, unless the Consultant has provided a written justification for the use of a single source in writing and the County concurs.
- C. The Consultant shall not, in the performance of the work under this Agreement, produce a design or specification which would be restrictive or written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment. The Consultant shall report to the County any single source or restrictive design or specification giving the reason(s) why, in the Consultant's professional judgment, it is necessary to restrict the design or a particular specification. The Consultant shall substantiate in writing, and to the County's satisfaction, the basis for the single source or restrictive design or specification.
- D. When one or more brand names or trade names of comparable quality or utility are listed, the words "or approved equal" shall follow the brand name(s) and the salient characteristics shall be identified.

SECTION 7. MONTHLY REPORTS

- A. Monthly Reports. Unless otherwise agreed to in writing with the Project Representative, not later than the 10th day of each calendar month during the performance of this contract, the Consultant shall submit to the Project Representative, a monthly report, in a format approved by the Project Representative. A monthly report is not needed if there are no Work Orders executed. Work Orders shall be identified in the monthly report by the associated Work Order number. At a minimum the monthly report shall identify the following:
1. For each Work Order identify costs incurred, budget status (budget vs. estimated balance to complete), revisions to Work Order scope and budget, project schedule, any variance between planned vs. actual performance, forecast completion date, all issues that may result in completion of any task beyond the established schedule or task budget, and all issues that may result in an increase in Work Order price.
 2. For the Contract as a whole identify the number of Work Orders issued, the number of executed Work Orders, and total overall budget, the budget per Work Order, budget spent to date per Work Order, budget spent to date for all Work Orders, and status of each Work Order.

SECTION 8. COMPENSATION

- A. Subject to the provisions set forth in this Agreement, the County will pay ConsultantName on a monthly basis for authorized and satisfactorily completed work and services rendered under this Agreement. Progress payments shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall the total progress payment(s) exceed the Total Price as defined herein. The amount to be paid to the Consultant shall be computed as hereinafter set forth; provided, that such payment shall not exceed a maximum amount of **@ DOLLARS (@)** ("Total Price"). **King County does not guarantee any minimum amount of work or that the value of the Work Orders executed will equal the Total Price.** In the event the Consultant incurs costs in excess of the Total Price or the Work Order budget the Consultant shall pay such excess from its own funds and the County shall not be required to pay any part of such excess and the Consultant shall have no claim against the County on account thereof.
- B. Compensation for work and services shall be on a cost plus fixed fee basis but not to exceed the Total Price. Compensation and the Work Order budget shall be the sum of Direct Labor Costs, Indirect Costs, Other Direct Costs and a Fixed Professional Fee, as described and defined below. Costs to be paid are identified in the Cost Summaries, attached hereto as Exhibits E, F, and G and incorporated herein by this reference, and comprise the following:
1. **Direct Labor Costs.** Direct Labor Costs shall be the total number of allowable hours worked on a Work Order by each individual multiplied by the Labor Rate identified in the Cost Summary (Exhibits E and F) for such individual.
 - a. The County shall only pay the Labor Rate and shall not pay any premium associated with overtime.
 - b. Labor Rates may be subject to reasonable adjustments in accordance with the following provisions:

- (1) Labor Rates shall not be modified prior to @ MONTH< DAY< YEAR. After @ MONTH< DAY< YEAR, any increase in Labor Rates shall be effective for a minimum period of at least 365 calendar days.
- (2) A Labor Rate shall not exceed \$65.00 per hour except in exceptional and rare circumstances when the County, in its sole discretion, agrees to a Labor Rate over \$65.00.
- (3) A Labor Rate of \$65.00 or greater shall not be increased during the Period of Performance, including all amendments, until the County increases its \$65.00 limitation on Labor Rates. In the event the County increases its \$65.00 limitation, the new labor rate limitation shall be applicable to this Contract and this provision shall apply to the new labor rate limitation.
- (4) A Labor Rate increase must be based on an actual and verifiable increase in labor costs.
- (5) The County has the right to refuse increases that lack reasonable justification.
- (6) For each firm (prime consultant and subconsultant) the cumulative effect of all labor rate increases shall not exceed five percent (5.00%) per year per firm.
 - (a) Calculation for the first labor adjustment shall be as follows:
 - (i) For each firm, add each individual's labor rate at the start of the contract (Base Labor Rate) together to determine the total base year labor rate (Hereinafter referred to as Firm's Base Labor Rate).
 - (ii) For each firm, add each individuals proposed labor rate together to determine the total proposed labor rate (hereinafter referred to as "Proposed Labor Rate").
 - (iii) If individuals have been added to the contract that were not originally included in the Firm's Base Labor Rate or removed from the contract sometime during the base year, the following adjustments shall be made to the Firm's Base Labor Rate to establish the Firm's Adjusted Base Labor Rate:
 - a. Add the verifiable labor rate applicable to that time period for the individual(s) to the Firm's Base Labor Rate
 - b. For individuals who are no longer available to work on the Contract, subtract the Base Labor Rate for the individual from the Firm's Base Labor Rate.
 - (iv) The Firm's Proposed Labor Rate must be no greater than five percent (5.00%) of the Firm's Adjusted Base Labor Rate.
 - (b) Calculation for the second labor adjustment shall be as follows:
 - (i) For each firm, the accepted Firm's Proposed Labor Rate becomes the Firm's Second Year Base Labor Rate. For each firm, each individuals accepted Proposed Labor Rate becomes the Second Year Base Labor Rate.

- (ii) For each firm, add each individuals proposed labor rate together to determine the total proposed labor rate (hereinafter referred to as "Second Year Proposed Labor Rate").
 - (iii) If individuals have been added to the contract that are not included in the Firm's Second Year Base Labor Rate or removed from the contract sometime during the year, the following adjustments shall be made to the Firm's Second Year Base Labor Rate to establish the Firm's Adjusted Second Year Base Labor Rate:
 - a. Add the verifiable labor rate applicable to that time period for the individual(s) to the Firm's Second Year Based Labor Rate
 - b. For individuals who are not longer available to work on the Contract, subtract the Labor Rate for the individual from the Firm's Second Year Base Labor Rate.
 - (iv) The Firm's Second Year Proposed Labor Rate must be no greater than five percent (5.00%) of the Firm's Second Year Adjusted Base Labor Rate.
- (7) The Consultant shall provide a minimum of thirty (30) days advance written notice of a change in Labor Rate. ConsultantName shall submit only one written notice of a change in Labor Rate per year (365 calendar day time period) that must include all individual rate increases. Unless the County disagrees in writing with the proposed Labor Rate(s), the Consultant may start billing at the new Labor Rate thirty (30) days after the advance notice; provided however, all new Labor Rates shall be effective at the beginning of a billing period. Labor Rates increases shall not be retroactive. Only services performed after the thirty (30) day time period shall be billed at the new Labor Rate. The written notice of the Labor Rate changes is considered a part of the Contract documents and shall be incorporated into the Contract in the next amendment. Written notice shall contain the following information:
- (a) For each Labor Rate increase, identify the name of each individual, job title/position, old Labor Rate, new Labor Rate, percentage rate increase;
 - (b) Affirmation that:
 - (i) The new Labor Rate represents the actual labor rate that is being paid to the employee as of the effective date of the rate increase;
 - (ii) Labor Rate increases shall have no impact on the scope of work or Work Order total price; and
 - (iii) The County will receive all services identified in the Scope of Work for the Total Price of the Work Order.
 - c. The County or County's designee may audit the Consultant's books, records, and other supporting data relevant to the Labor Rate, including but not limited to other Contract rates, terms and conditions in order to evaluate and validate any rate increases or decreases. Should the County determine that the Labor Rate charged to the County is more than the Labor Rate paid to an individual, the County shall be entitled to a refund of the difference between the actual rate paid

to the individual and the rate paid by the County plus associated overhead on the on the overpaid portion of the Direct Labor Costs.

2. **Indirect Costs.** Indirect Costs shall be the Overhead Rate identified in the Cost Summaries (Exhibits E, F, and G) for the firm multiplied by the Direct Labor Rates for every allowable hour worked on a Work Order and billed by the individual.
 - a. Overhead Rates shall not be modified prior to @ MONTH< DAY< YEAR. After @ MONTH< DAY< YEAR, any change in the Overhead Rates shall be effective for a minimum period of at least 365 calendar days. ConsultantName shall submit only one request per year that must include all changes to the Overhead Rate for ConsultantName and subconsultants.
 - b. Overhead Rates shall be increased or decreased based on the County's review and approval of proposed Overhead Rate(s).
 - (1) The Consultant shall provide the County, on an annual basis, a copy of financial statements and overhead rates within 30 days of completion of the most current fiscal year review for ConsultantName and subconsultants. The Consultant is further obligated to provide the County with sufficient information concerning the overhead rate, including but not limited to annual audited overhead rates, any actual or provisional federal (FAR) overhead rates, and additional information as requested to validate overhead costs.
 - (2) The County or County's designee may audit the Consultant's books, records, and other supporting data relevant to the overhead rate, including but not limited to other Contract rates, terms and conditions in order to evaluate and validate any rate increases or decreases.
 - (3) In the event the Consultant does not provide the County with the financial statement and supporting documentation and new overhead rate for each fiscal year, should the County determine that the Overhead Rate charged to the County is greater than the County verified overhead rate for that fiscal period, the County shall be entitled to a refund of the difference between the rate paid by the County and the overhead rate.
 - (4) When the County reviews requests to adjust Overhead Rates, the County will review and consider the actual historical overhead costs incurred by the firm with respect to Business & Occupational taxes; however, should the B&O tax percentage be increased or decreased, the County will make no adjustment to the Overhead Rate to account for future B&O taxes associated with costs for this Contract.

DELETE THE SECTION IN PINK IF IT DOES NOT APPLY

- c. The County may pay an Associated Project Cost (APC) in addition to the Overhead Rate if, after reviewing sufficient auditable information, the County determines that costs included in the APC rate are clearly not included in the overhead rate.
 - (1) APC includes but is not limited to all allowable costs associated with telephones, communication equipment, computers, software, computer support, information technology support, telecommunication, facsimiles, printers, copiers, cell phones, reproduction and duplication equipment and costs, and other miscellaneous company owned equipment and other

miscellaneous related office costs. The approved APC rate shall be not be increased during the Period of Performance, including all amendments.

(2) Profit, fee and any other type of mark-up are specifically prohibited on APC.

(3) The County has only authorized @ (Insert Firms' Legal Name) to receive an APC. All other firms shall not be paid an APC.

CHOOSE APPLICABLE PROVISION

TYPE A:

(a) @ NAME FIRM APC is \$@, which rate shall be paid for allowable hours performed and invoiced by @.

TYPE B:

(a) @ NAME FIRM APC is \$@, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @.

TYPE C:

(a) @ NAME FIRM APC is \$@ for computer engineering work, which rate shall be paid for allowable hours performed and invoiced by @, except for hours spent on CADD or by CADD personnel.

(b) @ NAME FIRM APC is \$@ for CADD work, which rate shall be paid for allowable hours performed and invoiced by @ for CADD personnel only.

(c) These two rates cannot be combined on any individual.

TYPE D:

(a) @ NAME FIRM APC is \$@ for computer engineering work, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @, except for hours spent on CADD or by CADD personnel.

(b) @ NAME FIRM APC is \$@ for CADD work, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @ for CADD personnel only.

(c) These two rates cannot be combined on any individual.

3. **Other Direct Costs.** Other Direct Costs ("ODC") are those costs which can be specifically identified with the Contract objectives, are required for performance of the Contract, are approved in advance in writing by the Project Representative, and are actually incurred. ODC shall be billed at cost, without markup. Allowable ODC fall into two categories: Invoiced ODC and Lump Sum ODC. Invoiced ODC are those ODC where the Consultant will have a receipt from an independent company for goods or services and include Subcontract Costs and Travel Costs. Lump Sum ODC are negotiated and defined in the Work Order as Lump Sum ODC. All other ODC not identified in Exhibits E, F, or G are unallowed costs.

- a. Subcontract Labor Costs. Authorized subcontract services (which include services provided by subconsultants) shall be compensated through (i) Labor

Costs, Indirect Costs, and Fee, specifically authorized by the County and identified in the Cost Summaries, Exhibit G or (ii) Billing Rate specifically authorized by the County and identified in the Cost Summaries, Exhibit G. Any labor costs or indirect costs that are not utilized and billed by the subconsultant shall not be paid to the Consultant.

- (1) Labor Costs. Labor Costs shall be calculated in the same manner as specified in Section 8 ¶B1 of this Exhibit O and subject to the provisions defined therein. Labor Rates for the subconsultants are identified for each individual in the Cost Summaries, Exhibit G.
 - (2) Indirect Costs. Indirect Costs shall be calculated in the same manner specified in Section 8 ¶B2 of this Exhibit O and subject to the provisions defined therein. The Overhead Rate for each subconsultant is identified in the Cost Summaries, Exhibit G.
 - (3) Fee. The Fee for each subconsultant is established in Exhibit G and shall be managed and paid out in the same manner as the provisions dealing with Fixed Professional Fee (Profit) defined later in this Section;
 - (4) Billing Rate. Billing Rate(s) for the subconsultants are identified for each individual working on a Work Order in the Cost Summaries, Exhibit G. Billing Rate costs shall be the total number of allowable hours worked on a Work Order by each employee multiplied by the Billing Rate for such employee. Billing Rates include all costs associated with labor, overhead and fee. The County shall only pay the Billing Rate and shall not pay any additional compensation for overtime, nor shall the County pay premium rates. The parties agree the Billing Rates identified in Exhibit G shall be used during the entire term of this Agreement, including all amendments; provided however, Billing Rates may be subject to reasonable adjustments at the discretion of the County. Requests for increases to Billing Rate(s) shall be presented at the same time Labor Rate increases are submitted.
- b. Travel Costs. The Consultant shall only be reimbursed for travel costs while in approved Travel Status. Travel Status shall be limited to out-of-town experts who will be brought to Washington or individuals who reside in Washington and are sent out-of-town for a limited duration. Reimbursement of travel costs, including transportation, lodging, meals and incidental expenses incurred while in a Travel Status in connection with this contract is limited as follows:
- (1) That local travel while on Travel Status shall be by bus, taxi or compact rental car;
 - (2) That reimbursement for meals inclusive of tips shall not exceed the limits identified in King County Code 3.24.080;
 - (3) That accommodation shall be at a reasonably priced hotel/motel and shall not exceed the Federal maximum lodging rate limit established by the Federal government for the appropriate locality (41 CFR 301 Appendix A); and
 - (4) That air travel shall be by coach class at lowest available commercial price taking into consideration the costs of transportation, other travel expenses, and salary.

- c. Reproduction, Copies, and Printing Costs. Reproduction or printing services on paper larger than 11" by 17" performed by an independent copy or reproduction company must be reasonable and not be considered by the County to be included within the Lump Sum Other Direct Costs.
 - d. Lump Sum Other Direct Costs. When applicable, each Work Order will establish a lump sum amount for Lump Sum Other Direct Costs. In negotiating the amount for the Lump Sum ODCs, the parties shall utilize the unit rates identified in Exhibits E and G. Payment for Lump Sum ODC will be paid in equal monthly installments for the scheduled duration of the Work Order. The parties may agree on additional Lump Sum ODCs, which agreement must be expressed in writing in the executed Work Order. Lump Sum ODCs include:
 - (1) Copies and Other Miscellaneous Reproduction and Duplication Costs. Copies and Other Miscellaneous Reproduction and Duplication is defined to include copying, reproduction and duplication of documents that is not performed by an independent copy or reproduction service, including but not limited to:
 - (a) Photocopies, Merlin plotter, or documents printed on printer, plotter, copier, or similar office equipment;
 - (b) Information printed on vellum, Mylar, transparencies; and
 - (c) Documents copied, printed, or reproduced in any manner in black and white and/or color.
 - (2) Courier Services, Mail, and Delivery Services. Courier Services, Mail, and Delivery Services includes any and all delivery services including but not limited to couriers, mail, UPS delivery, overnight or second day delivery, etc.
 - (3) Mileage, Parking, and Related Costs for Local Travel. The costs include mileage, parking, and related costs associated with Local Travel. Local Travel is considered travel within the State of Washington.
 - (4) @ Insert if any others – Check with Nora for language
4. **Fixed Professional Fee (Profit).** The County shall pay a Fixed Professional Fee for each Work Order. A percentage method will be used to determine the Fixed Professional Fee for each Work Order. The maximum percentage profit for any work order shall not exceed those percentages established for the Consultant as specified in the Fee Schedules, attached hereto and incorporated herein as Exhibits E and G. The exact dollar amount for the Fixed Professional Fee shall be the product of all direct labor multiplied by the profit percentage negotiated specific to the individual Work Order.
- a. The Fixed Professional Fee is developed on the Direct Labor Costs. The Consultant acknowledges and agrees that the Fixed Professional Fee does not and shall not include any profit or other markup on Indirect Costs, subconsulting costs or Other Direct Costs.
 - b. The Consultant acknowledges and agrees that the Fixed Professional Fee is a fixed amount, which cannot be exceeded because of any differences between the Total Price or Work Order budget and actual costs of performing the work required by this Agreement. In no event shall payments to the Consultant exceed said Total Price and Work Order budget.

- c. The Consultant acknowledges and agrees that the Fixed Professional Fee is only due and payable for work for which the County has given notice to proceed and which the Consultant has satisfactorily completed. The Fixed Professional Fee will not be paid for any tasks in a Work Order that the Project Representative does not authorize the Consultant to perform. The County is entitled to a deductive amendment for those unperformed tasks.
 - d. The Consultant acknowledges and agrees that the amount of the Fixed Professional Fee may be adjusted by the County to:
 - (1) Reduce the Fixed Professional Fee associated with Work Order Scope of Work that was not authorized or performed by the Consultant;
 - (2) Reduce the Fixed Professional Fee associated with deletions in the Work Order Scope of Work;
 - (3) Increase the Fixed Professional Fee for additional work added to the executed Work Order Scope of Work.
 - e. The Fixed Professional Fee shall be paid as follows:
 - (1) The Fixed Professional Fee will be paid monthly in proportion to the work satisfactorily completed on an individual Work Order. The proportion of work completed shall be determined by earned value of the deliverables satisfactorily completed. The Work Order shall identify the deliverables for payment of the Fixed Professional Fee.
 - (2) A payment for an individual month shall include that portion of the Fixed Professional Fee allocable to the Work Order satisfactorily completed during said month and not previously paid; and
 - (3) Any portion of the Fixed Professional Fee not previously paid in the monthly payments shall be included in the final payment for the Work Order provided that the Consultant satisfactorily completed the entire scope of work subject to the limitations set forth above.
- C. Unallowable Costs. The County shall not pay for any costs or direct charges associated with or relating to the following activities:
- 1. Any resubmission, changes to or adjustments in the invoices, and fixing improper invoices and the preparation and submission of monthly invoices if this cost is not included in the Consultant's overhead.
 - 2. Preparation of, discussion and/or negotiation of a request for:
 - a. Adjustments in any Labor Rate, Overhead Rate; and
 - b. Travel Status.
 - 3. Preparation for and negotiation of individual Work Orders, including but not limited to proposal preparation; budget preparation; drafting of scope of work and level of effort; and negotiation of scope of work or related level of effort and budget, etc.
 - 4. Preparation for and negotiation of changes to Work Order scope of work, including but not limited to request for change, proposal preparation, drafting scope of work, level of effort, and cost summary, and negotiation of scope of work or related level of effort/cost summary, etc.

5. Changing or reassigning personnel or subconsultants, including but not limited to preparing requests concerning Transfer of Knowledge for Key Personnel.
 6. Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, claims or Exhibit O Section 19, Disputes and Remedies.
 7. Compliance with Exhibit O Section 5C, Duty of Confidentiality.
 8. Providing the County or its designee(s) with access to contract documentation and the Project/Work Order file.
 9. Relocation costs.
 10. Meals, except when in Travel Status.
 11. Compliance with Exhibit O Section 13, Audit and Access to Records.
 12. Except for those costs included in the approved Overhead Rate @or approved APC:
 - a. Office supplies, facsimiles, cell phones, communication equipment, and other miscellaneous company owned equipment;
 - b. Facsimiles;
 - c. Long Distance;
 - d. Computers, software, computer support, information technology support.
 13. Except as negotiated in the Lump Sum Other Direct Costs, Photocopies, or documents printed on a printer, copier, or similar office equipment provided (a) the paper used was no larger than an 11" by 17" piece of paper; and (b) the document was not sent to an independent copy service for duplication.
 14. Safety equipment and training.
- D. Invoice Process. Unless otherwise agreed to with the Project Representative not later than the 10th day of each calendar month, the Consultant shall submit to the Project Representative an invoice for payment for work completed to the end of the previous month. Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be computed pursuant to the rates and limitations set forth hereinabove.
1. Invoices shall detail the work by task, hours and employee name and level for which payment is being requested; include copies of all invoices from authorized subconsultants for which payment is being requested; and shall itemize, and include copies of, receipts and invoices for the Other Direct Costs, except Lump Sum Other Direct Costs for which reimbursement is being requested. Receipts are not needed for reimbursement of meals.
 2. At no time shall the total cumulative amounts paid for each Work Order exceed the total which would be due upon the completion of all work associated with the Work Order multiplied by the percentage of the required work satisfactorily completed, as determined by the County.
 3. At no time shall the total cumulative amounts paid for all Work Orders exceed the Total Price.

4. Within forty-five (45) calendar days of receipt of an invoice and upon approval of the work satisfactorily completed and amount billed, the County will pay the amount of the invoice so approved.
 5. In the event of a disputed invoice, the County shall pay the undisputed amounts and withhold from payment the disputed portion of the invoice.
- E. Prompt Payment of Subconsultants. Within ten (10) business days of receipt of a progress payment from the County that includes dollars for work performed by subconsultants, ConsultantName shall pay such subconsultants out of such amounts as are paid by the County, for all work satisfactorily completed by the subconsultant. If ConsultantName fails or neglects to make such payment within ten (10) business days, ConsultantName shall pay to the subconsultant an interest penalty computed at one percent per month on amounts due for the period beginning on the day after the required payment date and ending on the day on which payment of the amount is due. ConsultantName shall ensure that this paragraph is included in all subconsultant contracts for work on this Contract.
- F. Final Payment for Each Work Order. Final payment of any balance earned by and payment to the Consultant for an individual Work Order will be made within sixty (60) calendar days after all of the following:
1. Satisfactory completion of all work required by the Work Order;
 2. Receipt by the County of the plans, studies, surveys, photographs, maps, calculations, notes, reports and all other documents and/or deliverables which are required to be prepared and submitted by the Consultant under this Contract;
 3. Delivery of all equipment/materials purchased specifically for the Work Order where the County has reimbursed the Consultants for such costs;
 4. Receipt by the County of a fully executed final statement of amounts invoiced by and paid to each subconsultant under the Work Order;
 5. Conclusion of an audit and verification of costs and performance as the County may deem necessary; and,
 6. Execution and delivery by the Consultant of a release of all claims against the County arising under or by virtue of a Work Order, other than such claims, if any, as may be specifically exempted by the Consultant from the operation of the release in stated amounts to be set forth therein.
- G. No payment, whether monthly or final, to the Consultant for any work shall constitute a waiver or release by the County of any claims, right or remedy it may have against the Consultant under this Agreement or by law; nor shall such payment constitute a waiver, remission or discharge by the County of any failure or fault of the Consultant to satisfactorily perform the work as required under this Agreement.

SECTION 9. TERMINATION OF AGREEMENT

A. Cure Notice.

1. If the County determines that a breach of Contract has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Contract or the Consultant has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:

- a. The County will provide the Consultant with a Cure notice; thereby notifying the Consultant in writing of the nature of the breach;
- b. Unless a longer period is provided by the County, The Consultant shall respond in writing within three (3) business days of its receipt of such notification, which response shall include a corrective action plan indicating the steps to be taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance within the number of calendar days specified by the County;
- c. The County will notify the Consultant in writing of the County's determination as to the sufficiency of the Consultant's corrective action plan. The determination of sufficiency of the Consultant's corrective action plan shall be at the sole discretion of the County;
- d. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, or the Consultant's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part;
- e. The County may withhold any payment owed the Consultant and/or instruct the Consultant to refrain from incurring additional costs until the County is satisfied that corrective action has been taken or completed;
- f. No increase in Total Price, Period of Performance, or Fixed Professional Fee shall result from this provision; and
- g. Nothing herein shall be deemed to affect or waive any other rights of the County.

B. Termination for Default

1. The County may terminate this Agreement or an individual Work Order, in whole or in part, in writing if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the County; provided that the Consultant has been given an opportunity to cure.
2. If the County terminates all or part of this Contract or Work Order for default, the County shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the County incurs because of the Consultant's default. In such event, the County shall consider the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the County at the date of termination, the cost to the County of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the County of the work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price or Work Order budget. This provision shall not preclude the County from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated; and
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation and other Project/Work Order documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the contract where the County has paid the Consultant for such items.
4. Upon termination, the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.
5. If, after termination for default, it is determined that the Consultant had not defaulted, the termination shall be deemed to have been effected for the convenience of the County. In such event, the equitable adjustment shall be determined as set forth below.

C. Termination for Lack of Appropriation

1. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement will terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Agreement, or in any amendment hereto, the County may, upon written notice to the Consultant, terminate this Agreement or Work Order in whole or in part. In accordance with King County Code 4.04.040, payment shall not exceed the appropriation for the year in which termination is effected.
2. If the Agreement is terminated for non-appropriation:
 - a. The County shall only be liable for payment in accordance with the terms of this Agreement for work satisfactorily completed prior to the effective date of termination; and
 - b. The Consultant shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated; and
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other Project/Work Order documentation, and such other information and materials as the Consultant may have accumulated in performing

this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the work where the County has paid the Consultant for such items.

4. Upon termination, the County may take over the work and prosecute the same to completion by agreement.

D. Termination for Convenience.

1. The County may terminate this Agreement or Work Order, in whole or in part, for the convenience of the County. The County shall terminate by delivery to the Consultant a Notice of Termination specifying the extent of the termination and the effective date.
2. If the County terminates this Contract for convenience, the County shall pay the Consultant only for the following items:
 - a. An amount for Direct Labor Costs and Indirect Costs in accordance with the Contract and Exhibits E, F, and G for services satisfactorily performed to the date of termination;
 - b. The Fixed Professional Fee associated with work satisfactorily performed;
 - c. Actual and reasonable Other Direct Costs incurred before the termination; and
 - d. Actual and Reasonable termination settlement costs the Consultant reasonably incurs relating to commitments which had become firm before the termination, unless the County determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants and actual reasonable accounting and clerical costs related to preparing Termination Settlement Proposal.
 - e. Under no circumstances shall payments made under this provision exceed the Total Price or Work Order budget.
3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated;
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other Project/Work Order documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the work where the County has reimbursed the Consultant for such costs;
 - d. Take any action necessary, or that the County may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the County has or may acquire an interest.
4. Within ninety (90) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the County a Termination Settlement Proposal. The Termination Settlement Proposal shall include:

- a. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination;
 - b. Actual and reasonable Other Direct Costs incurred before the termination;
 - c. Fixed Professional Fee associated only with work satisfactorily completed;
 - d. Reasonable termination settlement costs for terminating subconsultant contracts;
 - e. Actual reasonable costs related to accounting and clerical time spent preparing the Termination Settlement Proposal;
 - f. Documentation supporting the costs identified in the Termination Settlement Proposal; and
 - g. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the County is liable.
5. Termination settlement costs and proposals are subject to audit verification by the County.
 6. Upon termination, the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.
- E. If, because of death or unavailability, it becomes impossible for any Key Personnel employed by the Consultant or for any corporate officer of the Consultant to render services to the Contract/Work Order, the Consultant shall not be relieved of its obligations to complete performance under this Agreement without the concurrence and written approval of the County. If the County agrees to termination of this Agreement under this provision, payment shall be made as set forth in the Termination for Convenience provision.

SECTION 10. SUBCONTRACTS @ & ESSENTIAL PERSONNEL

A. SUBCONTRACTS

1. All subconsultants are subject to prior authorization by the County. Each subcontract shall be available for review and the cost summary subject to review by the Project Representative prior to the subconsultant proceeding with the work. The County hereby authorizes the Consultant to subcontract with the subconsultants listed in the Cost Summary, Exhibit G.
2. The Consultant shall submit monthly reports detailing all work completed by subconsultants during the preceding month and copies of all invoices relating thereto.

ESSENTIAL PERSONNEL PROVISIONS IS USED AT DISCRETION OF USER AGENCY

B. ESSENTIAL PERSONNEL

1. Consultant acknowledges that the experience and skill of the Essential Personnel was and continues to be an important factor in the County's selection of Consultant and the Consultant's team to perform the work. The names, titles and respective

position of the individuals holding key positions ("Essential Personnel") for the Contract are identified as:

- a. @ NAME< TITLE/POSITION < FIRM;
 - b. @ NAME< TITLE/POSITION < FIRM;
 - c. @ NAME< TITLE/POSITION < FIRM;
2. The Consultant Essential Personnel shall be permanently assigned to the Contract so long as such Essential Personnel are employed and such Essential Personnel shall be subject to the No Reassignment provision below.
 3. No Reassignment of Essential Personnel. ConsultantName agrees that it shall not remove or reassign, and shall not permit its subconsultants to remove or reassign Essential Personnel without:
 - a. Providing the County with thirty (30) calendar days advanced written notice identifying:
 - (1) Name of the Essential Personnel;
 - (2) An explanation of reassignment or removal;
 - (3) Name of the person proposed to replace the Essential Personnel and description of the experience and qualifications of the individual proposed to replace the departing Essential Personnel;
 - (4) A plan and schedule showing how the Transfer of Knowledge and Information between the departing and incoming individual will occur and allocation of hours associated with the entire Transfer of Knowledge and Information;
 - (5) Certification that the time associated with the "Transfer of Knowledge and Information" is not billed to the County and is not a cost borne by the County (The Transfer of Knowledge and Information includes the labor hours spent reviewing project documentation, participating in meetings with personnel associated with the Contract, and participating in site visits to familiarize oneself with the Contract and project location(s)); and,
 - (6) Identify adverse impacts to the Contract as a result of the loss of the Essential Personnel and how these impacts will be minimized.
 - b. Receiving written consent of the County. The County must agree to allocation of hours associated with the Transfer of Knowledge and may negotiate a reasonable and appropriate number of hours.
 4. Any time that County's prior written consent is not obtained, Consultant agrees to pay the County a sum of \$@ DOLLARS (@) as Liquidated Damages, and not as a penalty, to compensate the County for inefficiencies associated with such change. Consultant agrees that the sum established as Liquidated Damages is fair and reasonable and that the payment represents a reasonable estimate of fair compensation for the inefficiencies that may be reasonably anticipated from the reassignment or removal of Essential Personnel. Liquidated Damages shall not be assessed if the reason an individual (identified as Essential Personnel) is no longer available to participate on this Contract is beyond the reasonable control of the Consultant and/or applicable subconsultant.

5. Upon request by the Consultant, the County shall waive the liquidated damages if (a) the Consultant or subconsultant terminates a Essential Personnel; (b) the Essential Personnel is no longer working for or employed by the Consultant or subconsultant in any capacity; and (c) it is deemed by the County to be in the best interests of the Contract for the Consultant or subconsultant to remove the Essential Personnel from the Contract. The Consultant shall comply with paragraph 3 above.
6. The County shall not unreasonably withhold consent to remove Essential Personnel.

SECTION 11. NON-DISCRIMINATION, EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

A. Nondiscrimination And Equal Employment Opportunity

1. Nondiscrimination in Employment and Provision of Services. During the performance of the Agreement, neither the Consultant nor any party subcontracting under the authority of the Agreement shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under the Agreement. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to the Agreement.
2. King County's Domestic Partner Benefits (DPB) Ordinance 14823. King County's Domestic Partner Benefits (DPB) Ordinance 14823 prohibits the award of contracts valued at \$25,000.00 or more to firms that discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners. ConsultantName shall comply fully with the ordinance's provisions.
3. Nondiscrimination in Subcontracting Practices. During the solicitation, award and term of the Agreement, the Consultant shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subconsultants and suppliers, the Consultant shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.
4. Compliance with Laws and Regulations. The Consultant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI, VII of the Civil Rights Act of 1964, and the Restoration Act of 1987. The Consultant shall further comply fully with any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the Agreement.
5. Small Business and Minority and Women Business Enterprises Opportunities. King County encourages the Consultant to utilize small businesses, including Minority-owned and Women-owned Businesses Enterprises ("M/WBEs") in County contracts. The County encourages the Consultant to use the following voluntary practices to promote open competitive opportunities for small businesses, including M/WBEs:

- a. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to provide project information and to inform small businesses and other firms of contracting and subcontracting opportunities.
 - b. Placing all qualified small businesses, attempting to do business in King County, including M/WBEs, on solicitation lists, and providing written notice of subcontracting opportunities to these firms capable of performing the work, including without limitation all businesses on any list provided by the County, in sufficient time to allow such businesses to respond to the written solicitations.
 - c. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses, including M/WBEs.
 - d. Establishing delivery schedules, where the requirements of the Agreement permit, that encourages participation by small businesses, including M/WBEs.
 - e. Providing small businesses, including M/WBEs that express interest with adequate and timely information about plans, specifications, and requirements of the Agreement.
 - f. Using the services of available community organizations, consulting groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including M/WBEs.
 - g. The Washington State Office of Minority and Women's Business Enterprises (OMWBE) can provide a list of certified M/WBEs. OMWBE may be reached at 360-753-9693.
 - h. Review and make contact with firms identified on King County's Directory of certified Small Economic and Disadvantaged Businesses (SEDB).
6. Small Business and Minority and Women Business Enterprise Practices. Further, the County encourages small businesses, including M/WBEs, to participate in the following practices to promote open competitive opportunities:
- a. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to receive project information and to inform prime bidders/proposers of contracting and subcontracting capabilities.
 - b. Requesting placement on solicitation lists, and receipt of written notice of subcontracting opportunities.
 - c. Utilizing the services of available community organizations, consulting groups, local assistance offices, local publications including newspapers which advertise contracting opportunities, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including M/WBEs.
7. Equal Employment Opportunity. The Consultant will implement and carry out the obligations in its Affidavit and Certificate of Compliance regarding equal employment opportunity, and all other requirements as set forth in the Affidavit and Certificate of Compliance.
8. Unfair Employment Practices. King County Code Chapter 12.18 will be incorporated by reference as if fully set forth and such requirements shall apply to the Agreement. During the performance of the Agreement, neither the Consultant nor any party

subcontracting under the authority of the Agreement shall engage in unfair employment practices. It is an unfair employment practice for any:

- a. Employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
 - b. Employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
 - c. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a bona fide occupational qualification;
 - d. Employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
 - e. Employer, employment agency or a labor organization to retaliate against any person because this person has opposed any practice forbidden by KCC Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of KCC Chapter 12.18;
 - f. Publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of KCC Chapter 12.18.030.C., or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification; and/or
 - g. Employer to prohibit any person from speaking in a language other than English in the workplace unless:
 - (1) The employer can show that requiring that employees speak English at certain times is justified by business necessity, and
 - (2) The employer informs employees of the requirement and the consequences of violating the rule.
9. Discrimination In Contracting. King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Agreement. During the performance of this Agreement neither Consultant nor any party subcontracting under the authority of this Agreement shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17. It is an unfair contracting practice for a:
- a. King County government agency, business enterprise doing business in unincorporated King County or business enterprise required to comply with this chapter by the terms of an agreement with King County under K.C.C. 12.17.100 to discriminate against a person with respect to the bid, award or referral of a

contract or with respect to the conditions, terms, price, performance standards or other provisions of a contract;

- b. Contracting agency or trade association to discriminate against a person with respect to membership rights and privileges, admission to or participation in a guidance program or other business or occupational training program;
 - c. Bonding company to discriminate against a person regarding the terms and conditions under which bonding services are offered or performed;
 - d. Contracting agency or trade association to discriminate against a person with respect to a referral of a contract opportunity or assignment of a particular contract;
 - e. Contractor, business enterprise, contracting agency or trade association to retaliate against a person because that person has opposed an act of discrimination or because that person has made a charge, testified or assisted in any manner in an investigation, proceeding or hearing initiated under this chapter.
10. Record-Keeping Requirements and Site Visits. The Consultant shall maintain, for at least six (6) years after completion of all work under the Agreement, the following:
- a. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under the Agreement; and
 - b. Records, including written quotes, bids, estimates or proposals submitted to the Consultant by all businesses seeking to participate on the Agreement, and any other information necessary to document the actual use of and payments to subconsultants and suppliers in the Agreement, including employment records or records relating to the use of Disadvantaged Business Enterprises (DBEs).
 - c. The County may visit, at any time, the site of the work and the Consultant's office to review the foregoing records. The Consultant shall provide every assistance requested by the County during such visits. In all other respects, the Consultant shall make the foregoing records available to the County for inspection and copying upon request. If the Agreement involves federal funds, the Consultant shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Agreement.

B. Required Submittals

1. The Consultant shall update the submittals listed below for itself and submit to the King County's Business Development and Contract Compliance Section at the address below.

King County Business Relations and Economic Development
Business Development and Contract Compliance Section
Bank of America Tower, M.S. BOA-EX-2000
701 5th AVE STE 2000
Seattle, WA 98104
Phone: 206-205-0700, TTY Relay 711
Fax: 206-208-0719

2. Upon completion of all work and as a condition precedent to final payment, the Consultant shall submit a final Affidavit of Amounts Paid, to the Business Development and Contract Compliance Section. Identify amounts actually paid, and any amounts owed, to each subconsulting firm and/or supplier for performance under the Agreement. Failure to submit such affidavits may result in withholding of payments or the final payment. King County will provide affidavit forms.

C. Sanctions for Violations

1. Any violation of the mandatory requirements of the non-discrimination, equal employment, affirmative action and ADA/504 provisions shall be a material breach of contract, for which the Consultant may be subject to damages, withholding payment and any other sanctions provided for by contract and by applicable law.

SECTION 12. PATENTS, COPYRIGHTS AND RIGHTS IN DATA

- A. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the County for public use, unless the County determines it is not in the public interest that it be owned or available.
- B. The Consultant agrees that ownership of any plans, drawings, designs, specifications, computer programs, technical reports, operating manuals, calculations, notes, and other work submitted or which are specified to be delivered under this Agreement or which are developed or produced and paid for under this Agreement, whether or not complete (referred to in this Section as "Subject Data") shall be vested in the County or such other local, state or federal agency, if any, as may be provided by separate Contract with the County. The Consultant will not be held responsible for unauthorized reuse by the County of the Subject Data.
- C. All such Subject Data furnished by the Consultant pursuant to this Agreement, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page or in the name block of maps as may be determined by the County. The Consultant shall also place its endorsement on all Subject Data furnished by it. All such identification details shall be subject to approval by the County prior to printing.
- D. All information, materials, data and documentation furnished or made available to the Consultant by the County or its agents and representatives ("County Information") for purposes of performing services on this contract shall remain the property of the County. The Consultant shall obtain no proprietary rights or ownership interests to such County Information. Upon the County's written request, the Consultant shall return or cause to be returned to the County all such County Information remaining in the Consultant's possession at the termination or expiration of the Contract. The Consultant may keep copies of the County Information provided they maintain the confidentiality of the information and obtain the County's prior written consent.
- E. All calculations, notes, draft documents, reports, drawings, specifications, electronic files, including any and all e-mails, and any other materials, information or documentation developed or prepared in the performance of work for this Contract ("Consultant Information") shall be owned by and treated as County property. The Consultant shall obtain no proprietary rights or interests to such Consultant Information. All such Consultant Information is for use solely with respect to this Contract. Use of such Consultant information by anyone on other projects or for additions to this Contract outside the Scope of Work without the specific written consent of the Project

Representative is prohibited. Upon the County's written request, the Consultant shall transfer or cause to be transferred to the County all such Consultant Information at the termination or expiration of this Contract. With prior written consent of the County, the Consultant may keep a copy of the Consultant Information provided the Consultant maintains the confidentiality of such information.

- F. The Consultant shall ensure that the foregoing paragraphs are included in each subconsultant's Contract for work on this contract.

SECTION 13. AUDIT AND ACCESS TO RECORDS

- A. The Consultant, including its subconsultants, shall maintain books, records, documents, and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The County, or any of its duly authorized representatives, shall, for the purpose of audit and examination, have access to and be permitted to inspect such books, records, documents, and other evidence for inspection, audit and copying for a period of six years after completion of the Contract and/or Work Order. The County shall also have access to such books, overhead data, records and documents during the performance of work if deemed necessary by the County to verify Consultant work and invoices, to assist in negotiations for amendments to the Agreement or modifications to tasks, and to resolve claims and disputes. Such information shall include but not be limited to:
1. A statement about the accounting system indicating the following:
 - a. An overview of the accounting system and its capability to accumulate, distribute, and track costs and provide financial information.
 - b. Written procedures and policies concerning the accounting system, timekeeping, payroll, purchased services and materials, direct and indirect cost control, asset capitalization, depreciation, and pre-Contract costs.
 2. Chart of accounts including definition of what is included in each account.
 3. A statement indicating the basis for the overhead rate if it is historical information. In executing this Agreement, the Consultant certifies under penalty of perjury that the overhead burden rate information separates direct and indirect charges and that no direct charges are included with the indirect charges and that the indirect charges do not include any unauthorized charges per the Federal Acquisition Regulations Part 31, now and as hereinafter amended.
- B. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
- C. The Consultant agrees to the disclosure of all information and reports resulting from access to records under subparagraphs A and B of this Section provided that the Consultant is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Consultant.
- D. The Consultant shall ensure that the foregoing paragraphs are included in each subconsultant's Contract for work on this contract.

SECTION 14. PROHIBITED INTERESTS

- A. No member, officer or employee of the County or its governing body, or of any of its component agencies, during such person's tenure or one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof unless such interest has been disclosed in writing to the County and the County has determined that there are no prohibited conflicts of interest or ethical violations inherent in the circumstances.

SECTION 15. CONTINGENT FEES, GRATUITIES & CONFLICTS OF INTEREST

Consistent with the King County Code 3.04.030, the Consultant agrees as follows:

- A. The Consultant warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the County shall have the right to terminate this Agreement and/or in its discretion to deduct from the Total Price or Work Order budget or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- B. The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees or representatives to any official member or employee of the County in an attempt to secure a Contract or favorable treatment in awarding, amending or making any determination related to the performance of this Agreement.
- C. The Consultant warrants and covenants it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the performance of the work and services required to be performed under this Agreement and that it shall not employ any person or agent having any such interest. In event that the Consultant or its agents, employees or representatives hereafter acquire such a conflict of interest, the Consultant shall immediately disclose such interest to the County and take action immediately to eliminate the conflict or to withdraw from the Agreement as the County may require.
- D. If the County has reason to believe that the covenants set forth in subparagraphs A, B or C of this Section have been breached, the County shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten (10) calendar days of receipt with a detailed written explanation or answer to any facts, allegations or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by the Department's Director which shall be conducted within fifteen (15) calendar days of the receipt by the Director of the request, unless the County and the Consultant concur on a later date. The decision of the Director shall be a prerequisite to appeal thereof to the County Council or to Superior Court in the County of King, State of Washington. If, after consideration of the Consultant's response and any hearing, the Director determines that the covenants have been breached, the Director shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.
- E. The Consultant agrees not to accept employment or compensation from any person, firm, corporation, business or political entity, or third party where such employment or compensation is either:
 - 1. A conflict of interest; or

2. Likely to lead to a conflict of interest between the County's interests and the interests of such person, firm, corporation, or third party.

SECTION 16. LEGAL RELATIONS

- A. The Consultant shall comply, and shall ensure its subconsultants comply, with all the terms of this Agreement and the County resolutions and federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.
- B. In performing work and services hereunder, the Consultant and its subconsultants, employees, agents and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of the County in any manner whatsoever. The Consultant shall not hold itself out as, nor claim to be, an officer or employee of the County by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County. The Consultant shall be solely responsible for any claims/costs and/or losses arising from the Consultant's failure to pay wages, compensation, benefits or taxes and/or pay for services, supplies and/or materials provided by Consultant employees, agents and representatives, including subconsultants, and will protect, defend, indemnify and hold the County harmless therefrom.
- C. To the maximum extent permitted by law, the Consultant agrees to indemnify and save harmless King County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, reasonable attorney fees and expenses, penalties, judgments, settlements and damages of whatsoever kind or nature arising out of, in connection with, or incident to errors or omissions in the performance of contractual obligations, and/or the negligent performance of work or services provided by or on behalf of the Consultant, except to the extent caused by the negligence of the County. The Consultant's indemnity obligation includes an obligation to (a) satisfy any judgment or other final decision of a court or other tribunal; (b) pay any reasonable settlement negotiated by the County with respect to claims that are within the scope of the indemnity obligation; and (c) pay all claims against the County by an employee or former employee of the Consultant or its subconsultants, and for this purpose, by mutual negotiation, the Consultant expressly waives, as respects the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. The Consultant further agrees to defend all claims against King County and its officers, agents, and employees which, if proven, could result in liability of King County, its officers, agents, or employees for loss or damage caused by any such errors, omissions, or negligent work or services performed by the Consultant. The Consultant's obligation to defend shall include timely payment of all reasonable attorney fees, costs and expenses incurred in the defense of such claims. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees and expenses shall be allowed to the prevailing party.
- D. The County's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- E. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

SECTION 17. INSURANCE

- A. Prior to execution of the Agreement, the Consultant shall file with King County certificates of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and provides that King County receives notice at least thirty (30) calendar days prior to the effective date of any policy limit or cancellation of required coverages. The Consultant shall notify the County at least thirty (30) calendar days prior to the effective date of any cancellation or reduction in coverage in the policy. The Consultant shall maintain during the entire Contract period and for seven years thereafter, insurance coverage at least as broad as the limits and coverage outlined in this Agreement. Documentation of coverage shall be provided on each insurance renewal date. The Consultant shall, upon demand of King County, make available to King County at Consultant's local office in King County all such policies of insurance and the receipts of payment of premiums thereon. Failure to provide such policies of insurance within a time acceptable to King County shall entitle King County to suspend or terminate the Consultant's work hereunder. Suspension or termination of this Agreement shall not relieve the Consultant from its insurance obligation hereunder.
- B. The Consultant shall obtain and maintain at a minimum the limits of insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- C. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, is acceptable on a "claims made" form.
- D. If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through (1) policy renewals for not less than seven years from the date of completion of the work which is the subject of this Agreement or (2) the purchase of an extended discovery period for not less than seven years from the date of completion of the work which is the subject of this Agreement, if such extended coverage is available.
- E. If, in order to meet the requirements of this Exhibit O Section 17, the Consultant must rely on the insurance to be provided by one or more subconsultant, then such subconsultant(s) shall be required to meet all of the requirements herein applicable to the insurance they are providing, and shall include County and Consultant as additional insureds on all liability policies except Professional Liability/Errors & Omissions and Workers Compensation. The County will not make any payments on work performed by subconsultants until all insurance documentation from such subconsultants have been received and accepted by the County.
- F. Provided the affected insurance policies permit the following waiver, without voiding coverage, Consultant and County waive all rights against each other to subrogation for damages covered by property insurance.
- G. The Consultant shall maintain limits no less than, for:

1. **General Liability.** \$@ combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$@ aggregate limit. Coverage shall be at least as broad as Insurance Services Office form number (CG 00 01) covering **COMMERCIAL GENERAL LIABILITY**.
 2. **Professional Liability Errors and Omissions.** @ per claim and in the aggregate.
 3. **Automobile Liability.** \$@ combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number (CA 00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent), MCS 90, or auto pollution coverage.
 4. **Workers’ Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or “other States” State Law.
 5. **Employer’s Liability or “Stop Gap”.** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy.
 6. **Contractor’s Pollution Liability.** Contractor’s Pollution Liability coverage in the amount of \$@ per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed.
 7. **US Longshoremen & Harbor Workers Coverage.** If this Contract involves work on or adjacent to navigable water, as defined by the U.S. Department of Labor. This Contract requires proof of insurance coverage in compliance with the statutory requirements of Longshoreman and Harbor Workers’ Compensation Act administered by the U.S. Department of Labor).
 8. **Marine Activities, Boat, Floating Vessel.** If this Contract involves marine activities, or work from a boat, vessel, or floating platform, Consultant shall provide:
 - a. Protection & Indemnity coverage including injury to crew (Jones Act) and passengers; Protection & Indemnity, SP 38, SP23, or its equivalent for \$@ combined single limit per occurrence, and for those policies with aggregate limits, a \$@ aggregate limit
 - b. Hull and Machinery: Hull and Machinery Coverage at Market Value of vessel on American Institute Hull Clauses, 6/2/77 form or its equivalent.
 - c. Pollution Liability (OPA, CERCLA): \$@ and statutory limits of liability as applicable. Pollution insurance to satisfy U.S. Coast Guard requirements as respects the Federal Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended.
- H. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or

apply to the Consultant's liability to the County and shall be the sole responsibility of the Consultant.

- I. The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:
 1. **Liability Policies except Professional Liability & Errors and Omissions and Workers Compensation:**
 - a. The County, its officers, officials, employees and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant in connection with this Agreement. Such additional insured status shall include Products-Completed Operations.
 - b. To the extent of the Consultant's negligence, the Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the Consultant's insurance or benefit the Consultant in any way.
 - c. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
 - d. The Consultant's Protection and Indemnity (to include Jones Act) policy shall waive rights of subrogation against the County.
 - e. The Certificate of Insurance shall state that Explosion, Collapse, and Underground Damage (XCU) coverage has not been excluded.
 - f. The General Liability Policy shall contain a Per Project Aggregate endorsement.
- J. Unless otherwise approved by the County, Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Best's surplus size VIII.
- K. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.
- L. If at any time of the foregoing policies shall fail to meet the minimum standards above, the Consultant shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

SECTION 18. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY

- A. The Consultant shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement and shall ensure that, whenever possible, the cover page of each document printed on recycled papers bears an imprint identifying it as recycled paper. The Consultant shall use both sides of paper sheets for copying and printing. If the cost of recycled paper is more than fifteen percent (15%) higher than the cost of non-recycled paper, the Consultant shall notify the Project Representative, who may waive the recycled paper requirement.
- B. The Consultant shall use recycled/recyclable products wherever practical in the fulfillment of this Agreement.

SECTION 19. DISPUTES AND REMEDIES

- A. Choice of Law. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the Effective Date.
- B. Department Director or Director's Designee Review. All claims, counter-claims, disputes and other matters in question between the County and the Consultant arising out of or relating to this Agreement or the breach of it shall be referred to the Department's Director or a designee for determination, together with all facts, data, contentions and so forth which relate thereto. The Director or a designee shall make a determination within thirty (30) calendar days of such referral.
- C. Alternate Dispute Resolution. Should the claim, counter-claims, or disputes not be resolved, prior to initiating litigation and subsequent to the Department Director's decision, the parties shall attempt to resolve the matter through some mutually agreeable form of Alternate Dispute Resolution (ADR).
- D. Exhaustion of Administrative Remedies. Referral to and determination by, the Director or a designee and ADR shall be a condition precedent to the commencement of a civil action to adjudicate such dispute.
- E. Jurisdiction & Venue. Subject to these provisions herein, the Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement and the laws of the state of Washington shall apply.

SECTION 20. NOTICE

- A. Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party or twenty-four hours after mailing to the place of business set forth below, whichever is earlier.

King County:

Department of @

201 South Jackson Street, KSC-NR-0507

Seattle, WA 98104

Attn: @ PROJECT REP

The Consultant:

ConsultantName

@ ADDRESS

@CITY ZIP

Attn: @PM

SECTION 21. ENTIRETY, AMENDMENT AND EXECUTION OF AGREEMENT

- A. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire agreement between the Parties.
- B. The Contract documents included in the Agreement are identified below. Any inconsistency or conflict between the Contract documents shall be resolved by giving precedence in the following descending order of importance:
 - 1. Executed Work Orders;
 - 2. Agreement for Professional Services for ContractTitle, as modified by the latest amendment;
 - 3. Exhibit A, Scope of Work, as modified by the latest amendment;

4. Exhibits E, F, and G, Cost Summaries, as modified by the latest amendment;
 5. Exhibit A, Project Schedule (if applicable), as modified by the latest amendment;
 6. Exhibit R, Key Personnel List;
 7. Exhibit P, Insurance; and
 8. Exhibit Q, Non-Discrimination and other Forms.
- C. This Agreement shall be executed in four (4) counterpart copies, any of which shall be considered for all purposes as the original.

SECTION 22. THIRD PARTY RIGHTS

- A. Nothing in this Agreement is intended to and/or shall be construed to give any rights or benefits to any individual, company, and/or firm other than County and ConsultantName.

EXHIBIT P INSURANCE

EXHIBIT Q NON-DISCRIMINATION AND OTHER FORMS

EXHIBIT R KEY PERSONNEL LIST